

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

**September 23, 2004**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, September 23, 2004, at 1:30 P.M., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita Kansas. The following members were present: Morris K. Dunlap, Chair; Harold Warner Jr. Vice-Chair; James Barfield; Darrell Downing; John W. McKay Jr.; Bill Johnson; Ronald Marnell; Elizabeth Bishop; M.S. Mitchell; Gary K. Gibbs; and Frank Garofalo. Bud Hentzen; Denise Sherman and Bob Hernandez were not present. Staff members present were: John L. Schlegel, Secretary; Dale Miller, Current Plans Supervisor; Donna Goltry, Principal Planner; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Scott Knebel, Senior Planner; Jess McNeely, Associate Planner; and Rose Simmering, Recording Secretary.

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#### **❖ PLANNING COMMISSION ITEMS**

1. Approval of MAPC August 19, 2004 meeting minutes.

**MOTION:** To approve August 19, 2004 MAPC meeting as amended.

**BISHOP** moved, **WARNER** seconded the motion, and it carried (11-0).

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#### **❖ SUBDIVISION ITEMS**

2. Consideration of Subdivision Committee recommendations from the meeting of September 16, 2004.

**2-1. SUB2004-96 - Final Plat – CEDAR LANE ESTATES ADDITION, located south of 13<sup>th</sup> Street North, east of 143<sup>rd</sup> Street East.**

**NOTE:** This property is located in the County within three miles of the City of Wichita. It is in an area designated as "2010 Urban Service Area" by the Wichita-Sedgwick County Comprehensive Plan. This is a replat of a portion of the Crestview Country Club Estates Overbrook Second Addition, which includes the vacation of Ninth Street.

#### **STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer to serve the lots being platted.
- B. The applicant shall guarantee the extension of City water to serve the lots being platted. These improvements will be with the City of Wichita and consequently an outside-the-city water agreement shall be provided. **City Water and Sewer Department advises that additional utility easements may be needed.**
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- D. **County Engineering** needs to comment on the status of the applicant's drainage plan. **A drainage plan has been provided.**
- E. Per **Sedgwick County Fire Department**, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).
- F. The plat's text shall reference Reserve A as a "private drive".
- G. A covenant shall be submitted regarding Reserve A platted for private drive purposes, which sets forth ownership and maintenance of the private drive, and future reversionary rights of the reserve to the lots benefiting from the reserve.
- H. **Sedgwick County Fire Department** requests a 70' cul-de-sac. **The Applicant shall meet with County Fire Department to review this issue.**
- I. Since this plat is located in an area where public services are planned to be available for higher density development, in accordance with the Subdivision Regulations, the Applicant shall plat the lots so they may be readily converted to urban-type building sites without replatting. **The Subdivision Committee has waived the Lot Bundling regulations.**
- J. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the appropriate governing body, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the

governing body.

- K. The Applicant has platted 20-ft building setbacks, which represents an adjustment of the Zoning Code standard of 25 feet for the SF-5, Single-Family Residential District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission. **The setback modification has been approved.**
- L. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- M. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- N. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- O. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- P. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- Q. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- R. Perimeter closure computations shall be submitted with the final plat tracing.
- S. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- T. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **SBC has requested additional easements.**
- U. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff. This plat was approved last week by the Subdivision Committee. One of the conditions of approval was that the applicant meets with the County Fire Department to discuss a turnaround at the end of this private drive. They have done so and they have agreed on providing a hammerhead or alternative turn around for that private drive.

**MOTION:** To approve, subject to staff comments and citing the findings in their report

**JOHNSON** moved, **MITCHELL** seconded the motion, and it carried (11-0).

2-2. **SUB2004-97 – Final Plat – THE FAIRMONT THIRD ADDITION, located north of 21<sup>st</sup> Street North and on the west side of 127<sup>th</sup> Street East.**

**NOTE:** This is a replat of the Fairmont Second Addition.

**STAFF COMMENTS:**

- A. The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. A guarantee is needed.**
- D. A petition for a left turn lane was provided with Fairmont 2<sup>nd</sup> Addition. A new guarantee shall be provided.
- E. The parking areas within Reserve D need to be included as "parking easements" and need to be at least 20-feet deep and no wider than 50 feet. The parking easements shall be referenced in the plat's text specifying that the easements are granted for residential parking only and that no obstructions shall be constructed or placed within the easements.

- F. Since this plat proposes the platting of narrow street right-of-way with adjacent "15-foot street drainage and utility easements", a restrictive covenant shall be submitted which calls out restrictions for lot-owner use of these easements. Retaining walls and change of grade shall be prohibited within these easements as well as fences, earth berms and mass plantings.
- G. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- H. The Applicant shall guarantee the paving of the proposed streets.
- I. **City Fire Department** requests a 20-ft roadway for ingress and 29-ft roadway for egress at the 127<sup>th</sup> Ct entrance.
- J. For those reserves being platted for drainage purposes, the required covenant, which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- K. The applicant shall submit a covenant, which provides for four (4) off-street parking spaces per dwelling unit on each lot, which abuts a 32-ft and 58-foot street. The covenant shall inventory the affected lots by lot and block number and shall state that the covenant runs with the land and is binding on future owners and assigns.
- L. **GIS** needs to comment on the plat's street names. **The street names are approved.**
- M. A site benchmark is needed.
- N. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the City.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (11-0).

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**2-3. SUB2004-38 – Revised One-Step Final Plat – THORN CREEK FARMS ADDITION, located on the west side of Greenwich Road, north of Harry.**

**NOTE:** This is an unplatted site located in the City of Wichita. The site has been approved for a zone change (ZON 2003-12) from SF-20, Single-Family Residential to GO, General Office subject to platting. This revised plat includes additional property to the west.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site. **An off-site private sewer easement is needed.**
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **The drainage plan is approved by City Engineering. A drainage plan has been provided to County Engineering.**
- D. The plat proposes one opening along Greenwich Road. **Traffic Engineering has approved the access controls. A restrictive covenant has been provided for future cross-lot access with the property to the south upon redevelopment of this site.**
- E. **Traffic Engineering** has requested a petition for left-turn lanes.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities, which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (11-0).

**2-4. SUB2004-118 – One-Step Final Plat – SOUTH HIGH SCHOOL THIRD ADDITION, located north of MacArthur and on the east side of Seneca.**

**NOTE:** This is an unplatted site located within the City. The site is located within the 100-year floodplain.

**STAFF COMMENTS:**

- A. Municipal services are available to serve the site. **City Engineering** needs to comment on the need for guarantees or

easements. **No guarantees or additional easements are needed.**

- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved. As drainage will be directed onto I-235, a letter shall be provided from KDOT indicating their agreement to accept such drainage.**
- D. **Traffic Engineering** needs to comment on the access controls. The plat proposes complete access control along Seneca. Complete access control should be denoted along I-235. **Access controls are approved.**
- E. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings.
- F. This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- G. The Park and Pathways Plan indicates a bike path along the south line of the plat. A public access easement (20-ft minimum width) should be platted at this location. **Subdivision Committee approved this condition along with a Hold Harmless Agreement. The Applicant and City staff should meet to discuss feasibility of this easement.**
- H. The Applicant has platted a 5-ft building setback, which represents an adjustment of the Zoning Code standard of 25 feet for the SF-5, Single-Family Residential District. The Subdivision Regulations permit the setback provisions to be modified by the plat upon the approval of the Planning Commission. **The setback modification has been approved.**
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- Q. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

NEIL STRAHL Planning staff. This plat was approved by the Subdivision Committee last week, with the condition of a public access easement along the south line of the plat to accommodate a bike path easement. Along with that bike path a Hold Harmless Agreement was also required. There was some uncertainty last week as to the feasibility of that bike path due to a conflict with proposed ball fields. We were informed by the school district yesterday that a 15-foot easement was acceptable to them.

GAROFALO This report says that the drainage is going to be directed to I-235?

STRAHL That is what City Engineering has informed us. That is correct. The drainage plan showed that the storm water will be oriented towards the south and we need a letter from KDOT accepting that drainage.

GAROFALO Where is the access to this property?

STRAHL There is complete access control along Seneca. There will be three driveways along the north, along 35<sup>th</sup> Street. It is not an arterial so we don't have any access controls platted on 35<sup>th</sup> Street.

GAROFALO What is going in there?

STRAHL A baseball field will be going in there.

MITCHELL There is no bike facility west of Seneca that I am aware of, the School Board owns considerable property between this point and the elementary school that is over near Gold Street. Has any thought been given in making connections so that this isn't an isolated parcel that may never be used?

STRAHL The bike path plan shows connection to the west to Osage Park, which is about 1/2 mile to the west and connection to Gold Street, which connects up to Watson Park.

MITCHELL Wouldn't it be proper to go ahead and make that arrangement now?

STRAHL That was not discussed.

WARNER Did Subdivision Committee pass this with the premise that there would be information on this Hold Harmless Agreement? Do you have any information on that? Other than the fact that they started out with 40 feet for a bike path and now this is saying 20, and now the School Board is agreeing to 15 feet. The real discussion on this was their liability and security of the ball diamond because of access from the bike path.

JOE LANG, Assistant City Attorney. Our office has not talked to the School Board about this, but as I understand it, the Subdivision Committee was requesting this Hold Harmless as a condition of the requirement of the easement.

WARNER It was actually requested by the applicant, and the School Board wanted to know what their liability was.

LANG Their liability is going to be the same as it is anywhere else. There are streets, sidewalks, and bike paths along schools all over the City. This will eventually be part of a bigger bike path. Right now it is just an easement for one that may eventually be built. The Hold Harmless Agreement - which I assume is being suggested that it be provided by the City - would be an awkward instrument to apply to this thing. The Hold Harmless Agreement is not going to be on the plat, and we don't usually for water, sewer, drainage, streets, sidewalks; we don't normally give a Hold Harmless Agreement to everyone that the City acquires an easement from. It would be extremely cumbersome to try and figure out for any right-of-way that is running along multiple properties what aspect of liability and hold harmless would exist at any one stage along that sidewalk, street, or bike path, or whatever.

I think the School Board can look to its own remedies to feel protected and they have pretty good protection under the Tort Claims Act for recreational activities. Whether or not there was a Hold Harmless Agreement in place, someone could still file a claim or lawsuit against them, and the hold harmless would not make any difference. It would be the remedies that they would then have available to them.

Our recommendation is to not make this a requirement. Obviously, if there is going to be a bike path along this area and easements don't now exist along other School Board property, there will be discussions, either zoning action or development discussions, on how to acquire the remainder of those easements when it is requiring the remainder of those easements when it is time to build a bike path. This can certainly be tied in with the rest of the bike path if that ever occurs. I would certainly recommend that this one little segment not have different treatment than every other part of the bike path.

TERRY SMYTHE Baughman Company. I talked to Joe Hoover on behalf of the applicant USD 259, and he has agreed to a 15-foot path through the property, which would be allowed to snake and be adjacent to the edge of the ball field, and it was his impression that he would have a Hold Harmless Agreement. His impression is that if I am bicycling in the street that is City-owned property, and if I hit the school building, that is a whole different case than if it is an access easement across their property and something occurs on that access easement. Now, Joe Lang is the attorney and I don't believe that Joe Hoover is an attorney either, but it was Joe Hoover's impression that the Hold Harmless Agreement was agreed too. They don't want to be responsible for someone crossing their property even on an easement and asked for some interpretation of why other cases when a landowner, let's say the School District, puts a sprinkler system out in the street right-of-way they have to sign a Hold Harmless Agreement to trespass their irrigation system into the right-of-way. I have been told to tell you that we have agreed to a 15-foot bike path with a Hold Harmless Agreement.

WARNER Without the Hold Harmless Agreement your applicant is opposed to the bike path easement?

SMYTHE He wants better assurances that the School Board does not only have to give up an easement, but not have to be held liable for any accidents that occurs on his property and easement.

BISHOP Who is he?

SMYTHE Joe Hoover.

BISHOP Have you or he spoken with the School Board attorney?

SMYTHE I have no knowledge of a meeting. It was Joe Hoover's impression since the City was asking for the right to use his property that they would be willing in exchange for a 15-foot use of the property to be held accountable for anything that happens on that 15 foot.

MITCHELL I am having trouble telling whether you are saying yes, or no.

SMYTHE The owner has agreed to a 15-foot bike path with a Hold Harmless Agreement.

MITCHELL You have been told the City will not give you a Hold Harmless Agreement.

SMYTHE I think that is what Joe Lang said.

BISHOP Could you please discuss the drainage situation a little more.

SMYTHE Currently, today the property drains from the north to the south. When we build the ball diamond we have to basically, in the development plan, tell everyone where the water is going, and it will continue to go from the north end to the south end. The south end of our property abuts I-235, in case we ever leak water over our property onto the highway we have to have permission from KDOT.

MITCHELL You are planning some kind of mediation of the increased drainage as part of this project?

SMYTHE We are proposing to do some bio-detention basins at the south end of the property.

GAROFALO In the report condition G says 20-ft minimum width, and the Terry is saying 15 ft? Where are we then?

WARNER They started with 40.

MCKAY We are at 15 ft.

BISHOP That is something that we can decide, and I might add that one of the reasons for narrowing down the size of the bike path was to allow for the drainage to be placed in there.

MCKAY I think under the circumstances where they have an agreement that the 15-ft with the Hold Harmless, and the Hold Harmless we were just told by the City Attorney that is not going to happen, that we ought to defer this item until they get that straightened out.

WARNER I agree. I am not sure, being on the Subdivision Committee, and we discussed this a week ago to some extent and I am not sure the condition we voted on was the Hold Harmless Agreement. I was under the impression that either the applicant and the City or somebody was going to inform us what the applicant's liability was, and if so, what could be done to either correct that or minimize that.

BISHOP I think you are on the right track.

WARNER We approved this as the Hold Harmless Agreement being a prerequisite for approval. The question was, are they liable, and if so, can this be done where they won't be held liable? It doesn't sound to me like the School Board and the City have discussed anything.

GAROFALO Was this a misunderstanding then? How did the Hold Harmless Agreement get in there?

BISHOP I was the dissenting vote, and my major reason for not voting for it was the Hold Harmless Agreement, and the discussion as I recall was, let's go ahead and put it in and in the meantime between Subdivision and when MAPC meets some of these questions, in terms of what the liability is, and how that can be ironed out will be answered. The problem I see today is that they really haven't been answered or addressed between the attorneys.

MILLER It as my understanding that the School Board is experiencing no more additional liability whether the bike path is there or whether the bike path isn't because of the Tort Claims Act; that they are covered and that their liability does not increase. Joe may want to clarify that.

LANG Yes, they have more liability, technically, but as a practical matter we do not feel that the School District has any reasonable amount of additional liability because of the recreation exception under the Tort Claims Act. This is not different than a sidewalk easement, and there are sidewalks around schools all over the place. Just because the City runs a sidewalk somewhere that someone might trip and fall on, does that make that school more liable? Sure someone could sue the adjacent school but it would be very unlikely that they would prevail and it would be the same way with this bike path.

WARNER Wouldn't the difference be that the sidewalk is more useful to the school, there are people going to the school that use it, where the purpose of this is for the neighbors to ride their bike from here to there.

LANG Just as a street, the bike path could be used for access to the school.

MCKAY The example you used is the sidewalk around it, but that is normally in the right-of-way of the street, which is owned by the City, and this is an easement owned by USD 259.

LANG In most situations you are correct.

MCKAY So that is the difference in the liability, who has the ownership.

LANG But not in all cases, because this issue has come up with another private developer where we have been working with where the sidewalk easement is not in the street right-of-way, and they have been wanting a Hold Harmless Agreement to put on the sidewalk, and we are telling them no.

MARNELL The ownership of the underlying land, and so I can understand the difference between a sidewalk running by a school in a right-of-way versus an easement in which the School District owns the underlying land.

BARFIELD I think we are wasting time because the issue is a legal issue, and I think we should defer this Item.

MITCHELL I agree, because this will not be the last bike path that we discuss, and most of the cases it will be abutting private property, and we have not resolved that issue until the two legal entities of the School Board and the City can come to some kind of agreement so that this particular subdivision plat is not being held up.

BISHOP I am interested in Mr. Mitchell's suggestion that we need to look at the rest of the bike path along the land that is owned by USD 259, and I don't know if this is the proper time to put that in there, but it seems to me if there is going to be further discussion that possibly now is the time to do it.

MCKAY If that is the case then every plat that comes before us where they want an easement then maybe seven blocks away there might be something that belongs to somebody else. If the City wants that balance of that easement further to the east it should come back as a separate instrument at that time.

BISHOP My understanding is that a bike path in this area runs along land owned by USD 259 and could potentially connect two schools, an elementary school and a high school, and it seems to me that now would be a good time to put this on the table and look at it.

**MOTION:** To defer this plat until the legal entities for the School Board and the City can come to an agreement on the Hold Harmless Agreement.

**MITCHELL** moved, **MARNELL** seconded the motion, and it carried (11-0).

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**2-5.     SUB2004-105 – One-Step Final Plat – RIVERLAWN CHRISTIAN ADDITION, located south of 45<sup>th</sup> Street North and west of Meridian.**

**NOTE:**   This is an unplatted site located within the City.

**STAFF COMMENTS:**

- A.   The applicant shall guarantee the extension of sanitary sewer and City water to serve the lots being platted.
- B.   If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C.   **City Engineering** needs to comment on the status of the applicant's drainage plan. **The drainage plan is approved.**
- D.   The reference to access controls in the plat's text may be deleted.
- E.   This property is within a zone identified by the City Engineers' office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.
- F.   The signature line for the City Clerk needs to be revised to reference "Karen Sublett".
- G.   The platting binder indicates a party holding a mortgage on the site. This party's name must be included as a signatory on the plat, or else documentation provided indicating that such mortgage has been released.
- H.   The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- I.   The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J.   The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K.   To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.



- L. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- Q. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (11-0).

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**2-6. SUB2004-119 – One-Step Final Plat – TUMBLEWEED ESTATES ADDITION, located on the northwest corner of 117<sup>th</sup> Street North and Hydraulic.**

**NOTE:** This site is located in the County in an area designated as "rural" by the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan.

**STAFF COMMENTS:**

- A. Since neither sanitary sewer nor municipal water is available to serve this property, the applicant shall contact County Code Enforcement to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water wells. A memorandum shall be obtained specifying approval.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning Department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. **A drainage plan, a four-corner lot grading plan and a flood study are needed. Additional easements may be needed based on the flood study. Minimum pads may be needed based on flood study.**
- D. The scale in the legend needs relabeled.
- E. The benchmark needs an elevation.
- F. In accordance with Access Management Regulations for County plats, complete access control is required for arterials intersecting with local streets. Complete access control of 75 feet is needed along 117<sup>th</sup> St North Ct from 117<sup>th</sup> St. North.
- G. The plat denotes complete access control along the 117<sup>th</sup> St North frontage and one opening along Hydraulic for Lot 7. **660 feet of complete access control is needed along Hydraulic measured from the centerline of 117<sup>th</sup> St. North.**
- H. Per Sedgwick County Fire Department, access drives to any structure in excess of 150 feet from the edge of the roadway will need to be installed prior to final framing inspection, preferably before the start of any above grade construction work. Such drive to be installed according to fire department specifications: (1) Twenty feet of drivable surface is provided the entire length of the access drive designed to withstand the weight of fire apparatus in inclement weather with provisions for turning fire apparatus around. (2) To meet fire department specifications, the surface will need to be an all-weather material consisting of rock or gravel, ground asphalt, laid asphalt or concrete. It is to be applied a minimum of 4 inches in depth consistently over the entire width and length of the driving surface (gravel is prone to problems during extended periods of rain or snow and should be used with caution unless a good solid compacted base has been installed).
- I. In accordance with Access Management regulations, a major street intersection right-of-way is needed.
- J. The applicant shall guarantee the installation of the cul-de-sac to the 36-ft rock suburban street standard.
- K. In accordance with the KS Wetland Mapping Conventions under the Memorandum of Understanding between the USDA-

NRCS; USEPA; USACE; and USF&WS, this site has been identified as one with potential wetland hydrology. The US Army Corps of Engineers (USACE) should be contacted (316-322-8247) to have a wetland determination completed."

- L. Lots 2, 3 and 4 do not conform with the 200-ft lot width standard, which is measured at the building setback line.
- M. "Lots, a street and a block" shall be referenced in the plat's text.
- N. **GIS** needs to comment on the plat's street names. **The street name should be 117<sup>th</sup> Ct N.**
- O. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- P. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- Q. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- R. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- S. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone: 316-946-4556) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- T. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- U. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita Metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- V. Perimeter closure computations shall be submitted with the final plat tracing.
- W. Recording of the plat within 30 days after approval by the City Council and/or County Commission.
- X. The representatives from the **utility companies** should be prepared to comment on the need for any additional utility easements to be platted on this property. **Westar Energy and SBC have requested additional easements.**
- Y. The applicant is reminded that a compact disc (CD) shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD, or sent via e-mail to MAPD ([cholloway@wichita.gov](mailto:cholloway@wichita.gov)). This will be used by the City and County GIS Department.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried (11-0).

2-7. **DED2004-20 and DED2004-21: Dedication of Utility Easements, for property located on the southeast corner of 37<sup>th</sup> Street and Ridge Road.**

**DED 2004-20 and B) DED 2004-21 -- Dedication of Utility Easements from NWFP Investments, L.C., and 37<sup>th</sup> LLC, located on the southeast corner of 37<sup>th</sup> Street North and Ridge Road.**

**LEGAL DESCRIPTIONS:**

- a) A 30-foot utility easement for a portion of Lot 2, Ridge Port North Addition, Wichita, Sedgwick County, Kansas, described as commencing at the northwest corner of Lot 4, in said Ridge Port North Addition; thence N 00° 26'22" E, along the west line of said Lot 2, 81.20 feet, to the point of beginning; thence continue N 00° 26'22"E, along the west line of said Lot 2, 25.12 feet to a PI in the west line of said Lot 2; thence N08° 58'13"E, along the west line of said Lot 2, 4.95 feet; thence N 90° 00'00"E, 123.23 feet; thence N 00° 26'22"E, 10.00 feet; thence N 90° 00'00"E, 10.00 feet; thence S 00° 26'22"W, 10.00 feet; thence N 90° 00'00"E, 309.05 feet; thence S 00° 26'22"W, 30.00 feet; thence S 90° 00'00"W, 443.01 feet to the point of beginning.
- b) A 30-foot utility easement for the south 30.00 feet of Lot 4, Ridge Port North Addition, Wichita, Sedgwick County, Kansas, together with the south 30.00 feet of Lot 2, except the east 182.01 feet thereof.

**PURPOSE OF DEDICATION:** These dedications are associated with a lot split case (SUB 2004-53) for construction and maintenance of public utilities.

**AGENT/SURVEYOR:** Baughman Company, P.A., C/O Terry Smythe, 315 Ellis, Wichita, KS 67211

**STAFF RECOMMENDATION:** Accept the Dedications.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**MCKAY** moved, **DOWNING** seconded the motion, and it carried (11-0).

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❖ **PUBLIC HEARING — VACATION ITEMS**  
**ADVERTISED TO BE HEARD NO EARLIER THAN 1:30 P.M.**

**3-1. VAC2004-39- Request to Vacate a Portion of Street Right-of-Way and a Platted Street Side Setback.**

**APPLICANTS/OWNERS:** Ardys K Badger

**LEGAL DESCRIPTION:** That portion of the Winchester Drive ROW, abutting the north side of Lot 1, Block 14, and abutting the south side of Lot 7, Block 7, ending at the intersection of Cambridge Road all in the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas

The platted 50-foot street side setbacks running parallel to the north side of Lot 1, Block 14, and parallel the south side of Lot 7, Block 7, ending at the intersection of platted front setbacks on Lot 1, Block 14 and Lot 7, Block 7, all in the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas

**LOCATION:** Generally northwest of the K-42 and 55<sup>th</sup> Street South intersection, Sedgwick County

**REASON FOR REQUEST:** To revert to private property undeveloped ROW the applicant has been maintaining, to remove any existing encroachments and to allow a barn

**CURRENT ZONING:** Site and all property in the area is zoned "RR" Rural Residential.

The applicants are requesting consideration to vacate the unimproved Winchester Drive ROW, per the legal description. The ROW abuts the applicants' two properties on its north and south sides, intersects Cambridge Road on its west side and dead ends into a unplatted large tract single-family residential development on its east side. The large tract development on the ROW's east side is served by a cul-de-sac, which provides access to K-42 for all 16 tracts of the single-family residential development. The eastern unplatted tracts were developed from the early 1980s through the late 1990s. The K-42 Estates Addition was recorded with the Register of Deeds July 21, 1969, which means the extension of Winchester was prevented by the latter development of the unplatted eastern properties. The proposed vacated ROW essentially provides access to only the applicant's two lots. All abutting (two, the applicant and the eastern tract owner) property owners have signed the application and petition to vacate the ROW. Reversion of the ROW is to the applicants' two lots. There are no public utilities in the platted ROW.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval of the vacation of this portion of Winchester Drive ROW and the platted 50-foot street side setbacks that run parallel to this portion of Winchester Drive.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, in the Derby Reporter, of notice of this vacation proceeding one time September 2, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portions of the street ROW and platted street side setbacks and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the portion of the Winchester Drive street ROW and platted 50-foot street side setbacks, described in the petition should be approved with conditions;

- (1) Vacate the portion of the Winchester Drive ROW, abutting the north side of Lot 1, Block 14, and abutting the south side of Lot 7, Block 7, ending at the intersection of Cambridge Road all in the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas and the unplatted tract on the east side.
- (2) Vacate the platted 50-foot street side setbacks running parallel to the north side of Lot 1, Block 14, and parallel the south side of Lot 7, Block 7, ending at the intersection of the platted front setbacks on Lot 1, Block 14 and

Lot 7, Block 7, all in the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas. Replace with the street side setbacks per the UZC's "RR" zoning district.

- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (4) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

- (1) Vacate the portion of the Winchester Drive ROW, abutting the north side of Lot 1, Block 14, and abutting the south side of Lot 7, Block 7, ending at the intersection of Cambridge Road all in the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas and the unplatted tract on the east side.
- (2) Vacate the platted 50-foot street side setbacks running parallel to the north side of Lot 1, Block 14, and parallel the south side of Lot 7, Block 7, ending at the intersection of the platted front setbacks on Lot 1, Block 14 and Lot 7, Block 7, all in the K-42 Estates Addition, as recorded with Wichita, Sedgwick County, Kansas. Replace with the street side setbacks per the UZC's "RR" zoning district.
- (3) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants.
- (4) All improvements shall be according to City Standards, including any driveways from private property onto public ROW.
- (5) All conditions to be completed within 6 months of approval by the MAPC or the vacation request will be considered null and void.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **GAROFALO** seconded the motion, and it carried (11-0).

**3-2. VAC2004-40- Request to Vacate a Portion of a Platted Easement.**

**OWNER/APPLICANT:** Victoria Homes c/o Steve Loeb sack

**LEGAL DESCRIPTION:** Vacate one-foot of platted 10-foot easement, where cantilever walls for fireplace and a bay window encroach into it on Lot 25, Block A, Angel Fire Addition, as recorded Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located midway between West Street and Meridian Avenue on the north side of 47<sup>th</sup> Street South, 4626 South Leonine.

**REASON FOR REQUEST:** New house built into easement

**CURRENT ZONING:** Subject property and adjacent northern, southern and western properties are zoned "SF-5" Single-family Residential. Properties east of the site are zoned "SF-20" Single-family Residential.

The applicant request vacation of a portion of the platted 10-foot utility easement. The cantilevered walls of a fireplace and a bay window have encroached one-foot deep into the platted easement located on Lot 25; Block A, Angel Fire Addition. There are no water or sewer in the platted 10-foot utility easement. The Angel Fire Addition was recorded with the Register of Deeds April 2, 2001.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate a portion of the platted easement as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 2, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described portion of platted easement and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions:

- (1) Vacate only that portion of the easement where the encroachments occur. Provide Staff with a metes and bounds description of the vacated portion of the platted utility easement where the encroachments occur.
- (2) Any relocation or reconstruction of public utilities made necessary by this vacation shall be the responsibility of the applicant.
- (3) All improvements shall be according to City Standards.
- (4) All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate only that portion of the easement where the encroachments occur. Provide Staff with a metes and bounds description of the vacated portion of the platted utility easement where the encroachments occur.
2. Any relocation or reconstruction of public utilities made necessary by this vacation shall be the responsibility of the applicant.
3. All improvements shall be according to City Standards.
4. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **GAROFALO** seconded the motion, and it carried (11-0).

**3-3. VAC2004-41 – Request to Vacate a Portion of a Platted Utility Easement.**

**OWNER/APPLICANT:** Ridge Port Development, LLC c/o Rob Ramseyer

**AGENT:** Baughman Company PA, PA c/o Phil Meyer

**LEGAL DESCRIPTION:** The platted 10-foot utility easement (except for the northeasterly 10-feet and the southwesterly 15-feet) centered on the lot line common to Lots 4 & 5, Block B, Ridge Port 4<sup>th</sup> Addition, as recorded Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located midway between 29<sup>th</sup> Street north and 37<sup>th</sup> Street North on the east side of Ridge Road, southeast of Westwind Bay Court and Westwind Bay

**REASON FOR REQUEST:** Lot split will reconfigure lots

**CURRENT ZONING:** Subject property and northern, southern and western adjacent properties are zoned "TF-3" Two-family Residential. Properties east of the site are zoned "SF-5" Single-family Residential

The applicant proposes vacation of the platted 10-foot utility easement located between Lots 4 & 5, Block B, Ridge Port 4<sup>th</sup> Addition. A lot split will reconfigure the lots. There are no water or sewer in the easement. The Ridge Port 4<sup>th</sup> Addition was recorded Register of Deeds April 17, 2000

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted easement as described with conditions.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 2, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described platted easement and the public will suffer no loss or inconvenience thereby.

3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions;
1. Vacate only that portion of the easement as described in the legal description and provide Staff with a copy of the approved Lot Split.
  2. (2) Provide easement dedicated by separate instrument, as necessary or provide easement on the lot split.
  3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  4. All improvements shall be according to City Standards.
  5. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate only that portion of the easement as described in the legal description and provide Staff with a copy of the approved Lot Split.
2. Provide easement dedicated by separate instrument, as necessary or provide easement on the Lot Split.
3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
4. All improvements shall be according to City Standards.
5. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **GAROFALO** seconded the motion, and it carried (11-0).

3-4. **VAC2004-42 – Request to Vacate a Portion of a Platted Utility Easement.**

<b><u>OWNER/APPLICANT:</u></b>	13 <sup>th</sup> Avenue Partners, LLC Venture Seven Development, LLC	The B.E.D. Concept, LLC Gateway Center, LLC
<b><u>AGENT:</u></b>	PEC, c/o Rob Hartman	
<b><u>LEGAL DESCRIPTION:</u></b>	The platted 20-foot utility easement located along the south property lines Lot 1 & 12, Block 12, the Gateway Center Addition, as recorded Wichita, Sedgwick County, Kansas. (see attached legal)	
<b><u>LOCATION:</u></b>	Generally located approximately ¼ mile south of 13 <sup>th</sup> Street North on the east side of Greenwich Road.	
<b><u>REASON FOR REQUEST:</u></b>	Replace with a 30-foot drainage and utility easement	
<b><u>CURRENT ZONING:</u></b>	Subject property and northern, eastern and western adjacent properties are zoned "LC" Limited Commercial. Properties south of the site are zoned "TF-3" Two Family Residential	

The applicant proposes vacation of the platted 20-foot utility easement (see legal) located on the south property lines of Lots 1 & 12, Block 12, the Gateway Center Addition. There is sewer in the eastern portion of the utility easement. The applicant proposes to replace the existing platted 20-foot utility easement with a 30-foot drainage and utility easement for future development of the site. The site is part of CUP DP-239. The Gateway Center Addition was recorded with the Register of Deeds was recorded May 6, 1999

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted easement as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 2, 2004 which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described platted utility easement and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner, the prayer of the petition ought to be granted.

B. Therefore, the vacation of the platted utility easement described in the petition should be approved with conditions;

1. Provide Staff with a copy of a drainage and utility easement dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities to replace the platted 20-foot utility easement.
2. Any relocation or reconstruction of public utilities, including sewer, made necessary by this vacation shall be the responsibility of the applicant and must be reviewed and approved as needed by Public Works prior to relocation or reconstruction and shall be the responsibility of the applicant.
3. Provide a guarantee, if needed, for the relocation of the existing sewer.
4. Provide Staff, as needed, with drainage plan for review and approval by Public Works and Water and Sewer.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Provide Staff with a copy of a drainage and utility easement dedicated by separate instrument, as needed and approved by Public Works, Water & Sewer, Storm Water and franchised utilities to replace the platted 20-foot utility easement.
2. Any relocation or reconstruction of public utilities, including sewer, made necessary by this vacation shall be the responsibility of the applicant and must be reviewed and approved as needed by Public Works prior to relocation or reconstruction and shall be the responsibility of the applicant.
3. Provide a guarantee, if needed, for the relocation of the existing sewer.
4. Provide Staff, as needed, with drainage plan for review and approval by Public Works and Water and Sewer.
5. All improvements shall be according to City Standards.
6. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **GAROFALO** seconded the motion, and it carried (11-0).

**3-5. VAC2004-43 – Request to Vacate a Portion of a Platted Utility Easement**

**OWNER/APPLICANT:** Leewood Homes c/o Loren Perry

**LEGAL DESCRIPTION:** The platted 20-foot utility easement centered on the lot line common to Lots 22 & 23, Block 1, Ironhorse at Oxford Addition, as recorded Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located midway between 21<sup>st</sup> Street North and 29<sup>th</sup> Street North, west of Woodlawn Boulevard, 6008-6010 & 6014-6016 East Ironhorse Court

**REASON FOR REQUEST:** Unused easement.

**CURRENT ZONING:** Subject property and adjacent northern, eastern and southern properties are zoned "TF-3" Two-family Residential. Adjacent western properties are zoned "SF-5" Single-family Residential.

The applicant proposes vacation of the platted 20-foot utility easement located between Lots 22 & 23, Block 1, Ironhorse at Oxford Addition. The applicant will develop the property as a duplex. There are no water or sewer in the easement. The Ironhorse at Oxford Addition was recorded with the Register Deeds January 4, 2003.

Based upon information available prior to the public hearings and reserving the right to make recommendations based on subsequent comments from City Public Works, franchised utility representatives and other interested parties, Planning Staff recommends approval to vacate the platted utility easement as described with conditions.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Wichita Eagle of notice of this vacation proceeding one time September 2, 2004 which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described platted easement and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the platted easement described in the petition should be approved with conditions;
1. Vacate the 20-foot utility easement centered on the lot line common to Lots 22 & 23, Block 1, Ironhorse at Oxford Addition, stopping at its point of intersection with the platted 50-foot drainage and utility easement located on the west sides of Lots 22 & 23, Block 1, Ironhorse at Oxford Addition.
  2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
  3. All improvements shall be according to City Standards.
  4. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

1. Vacate the 20-foot utility easement centered on the lot line common to Lots 22 & 23, Block 1, Ironhorse at Oxford Addition, stopping at its point of intersection with the platted 50-foot drainage and utility easement located on the west sides of Lots 22 & 23, Block 1, Ironhorse at Oxford Addition.
2. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
3. All improvements shall be according to City Standards.
4. All conditions to be completed within 6 months of approval by the MAPC or the vacation application request will be considered null and void

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **GAROFALO** seconded the motion, and it carried (11-0).

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❖ **PUBLIC HEARING — ZONING ITEMS**

- 4a. **Case No.: CUP2004-36 Associated with (ZON2004-40)** – New Market V LLC, c/o George Sherman (vice president); PEC, PA, c/o Rob Hartman (agent) request Creation of NewMarket V Community Unit Plan on property described as;

(C.U.P. LEGAL ONLY)

PART OF THE NORTH HALF OF THE NORTHEAST QUARTER, SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; DESCRIBED AS:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; THENCE BEARING N89 degrees 46'15"W, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 40.00 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 75.00 FEET TO THE POINT OF BEGINNING; THENCE BEARING N89 degrees 46'15"W, PARALLEL WITH THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 175.00 FEET; THENCE BEARING N81 degrees 14'24"W, A DISTANCE OF 101.12 FEET; THENCE BEARING N89 degrees 45'15"W, PARALLEL TO THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 14.68 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 599.99 FEET; THENCE N89 degrees 46'15"W, A DISTANCE OF 358.94



FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 656.12 FEET TO THE NORTH LINE OF LOT 21, BLOCK 9, EVERGREEN ADDITION; THENCE BEARING S89 degrees 47'16"E, ALONG THE SAID NORTH LINE OF LOT 21, BLOCK 9, EVERGREEN ADDITION, A DISTANCE OF 613.92 FEET TO A POINT 75.02 FEET WEST OF THE EAST LINE OF THE SAID NORTHEAST QUARTER; THENCE BEARING N03 degrees 19'23"E, A DISTANCE OF 1047.19 FEET; THENCE N01 degrees 24'27"E, A DISTANCE OF 195.04 FEET TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 577,896 SQUARE FEET OR 13.27 ACRES MORE OR LESS. Generally located South of 29<sup>th</sup> Street North and west of Maize Road.

and

- 4b. **Case No.: ZON2004-40 Associated with (CUP2004-36)** - New Market V LLC, c/o George Sherman (vice president); PEC, PA, c/o Rob Hartman (agent) request Creation of NewMarket V Request Zone change from "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

SF-5 TO L.C. ZONING legal only

PART OF THE NORTH HALF OF THE NORTHEAST QUARTER, SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; DESCRIBED AS: BEGINNING AT THE NORTHEAST CORNER OF SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST OF THE 6TH P.M., SEDGWICK COUNTY, KANSAS; THENCE BEARING N89 degrees 46'15"W, ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 330.00 FEET; THENCE BEARING S01 degrees 24'27"W, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 660.00 FEET; THENCE BEARING N89 degrees 46'15"W, PARALLEL WITH THE NORTH LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 358.94 FEET; THENCE BEARING S01 degrees 24'27"W, A DISTANCE OF 656.12 FEET; THENCE BEARING S89 degrees 47'16"E, A DISTANCE OF 688.94 FEET TO THE SOUTHEAST CORNER OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 6, TOWNSHIP 27 SOUTH, RANGE 1 WEST; THENCE BEARING N01 degrees 24'27"E, A DISTANCE OF 1315.92 FEET, TO THE POINT OF BEGINNING. SAID TRACT CONTAINING 15.4 ACRES MORE OR LESS. Generally located South of 29<sup>th</sup> Street North and west of Maize Road.1

**BACKGROUND:** The applicant is requesting to create DP-278 New Market V Commercial Community Unit Plan, which would be a 13.3 acre development with three parcels proposed for commercial use. The property is located west of Maize Road on the south side of 29<sup>th</sup> Street North. Parcel 1 is 1.35 acres and is located at the Maize/29<sup>th</sup> Street North intersection. Parcel 2 (10.98 acres) and parcel 3 (.93 acres) front Maize Road; with parcel 2 wrapping around the smaller parcel 3 at the CUP south boundary.

Proposed uses are "LC" Limited Commercial uses, except: group residences, correctional placement residences; vehicle storage yards; vehicle repair, general; outdoor storage; pawn shops; taverns; nightclubs; asphalt or concrete plants; sexually oriented business, and adult entertainment as defined by city code. Likewise, any use requiring a Conditional Use in "LC" shall require a CUP amendment or adjustment, as determined by the planning director.

Maximum building coverage is approximately 20 percent on all parcels. Floor area ratio is also approximately 20 percent for parcels 1 and 3, and 29 percent for parcel 2. Maximum height is 35 feet for parcels 1 and 3, and 40 feet for parcel 2. Setbacks are established at 35 feet along Maize and 29<sup>th</sup> Street North, no setbacks are given for the west and south boundary lines.

The CUP includes provisions for landscaping per Landscape Ordinance of the City of Wichita, and a pedestrian circulation system within the CUP. The CUP calls for architectural compatibility among the buildings in the CUP. Signage requested is per the standard City of Wichita signage requirements except for a requested 300 square foot sign on 29<sup>th</sup> with only 289 feet of frontage.

North of the CUP, across 29<sup>th</sup> Street North is SF-20 zoned property developed with suburban residences; this area is proposed for a health club development. Property south of the proposed CUP is the LC zoned Evergreen commercial development, owned by the Target Corporation. East of the application area, across Maize, is a single, large SF-20 zoned single-family suburban residence. West of the development is an LC zoned approved CUP (DP 269 – Spencer's Cove). Also west of the site is SF-5 zoned property under the same ownership as the application area, and designated as a drainage reserve. The US Army Corps of Engineers has notified staff that the application area, as well as surrounding areas, is classified as a jurisdictional wetland, requiring a permit for development.

**CASE HISTORY:** The property is unplatted. This zone change / CUP request was originally scheduled to be heard on September 9<sup>th</sup>, 2004, but was deferred at the request of the applicant in order to clarify General Provisions #13 and 22.

**ADJACENT ZONING AND LAND USE:**

NORTH:	"SF-20"	Single-Family	Suburban single-family residential
SOUTH:	"LC"	Limited Commercial	Commercial development underway
EAST:	"SF-20"	Single-Family	Suburban single-family residential
WEST:	"SF-5"	Single-Family	Vacant, designated drainage reserve
	"LC"	Limited Commercial	Vacant, approved for commercial CUP

**PUBLIC SERVICES:** Current traffic counts on 29<sup>th</sup> Street North are unavailable. Projected provisional traffic volumes for 2030 on 29<sup>th</sup> Street North west of Maize Road would be 11,000 vehicles per day. Current traffic counts on Maize between 21<sup>st</sup> and 29<sup>th</sup> are 17,967 vehicles per day.

Existing half width right of way (ROW) is 30 feet on 29<sup>th</sup> Street North and 40 feet on Maize Road. The CUP proposes a 60-foot half width ROW tapering to 75 feet at the intersection on 29<sup>th</sup> Street North. The CUP proposes retaining the existing 40-foot half width ROW on Maize at the 29<sup>th</sup> intersection, and tapering to 75 feet further south with a right of way easement.

The C.U.P. proposes one point of access onto 29<sup>th</sup> Street North as a right-in/right-out only point of access. The CUP proposes three points of access along 1,042 feet of Maize Road, without designating any as right-in/right-out only. The CUP proposes internal cross-lot circulation, but does not call for cross lot circulation with adjacent commercial properties along arterial streets. The CUP does not address guarantees for street improvements.

Other normal public services are available or are in the process of being extended to the site.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development.

The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features that limit noise, lighting, and other activity from adversely impacting surrounding residential areas.

The City of Wichita Access Management Policy requires 60-foot half width ROW on arterials tapering to 75 feet at arterial intersections, and calls for a 25-foot by 25-foot "corner clip" at arterial corners. The Policy encourages cross-lot access between adjacent properties to minimize driveway accesses along arterial streets.

The City of Wichita Sign Code limits signage at this location to .8 square feet per linear foot of street frontage.

**RECOMMENDATION:** The proposed CUP is not in conformance with the "Wichita Land Use Guide" recommendation of low-density residential use; it is in conformance with the commercial locational guidelines. The application area is buffered from single-family residential uses by other proposed commercial uses, arterial streets, and a large reserve.

The requested number of access points can meet the Access Management Policy, however, the proposed ROW configuration and lack of cross lot access provisions do not meet the Access Management Policy requirements. Proposed signage on 29<sup>th</sup> Street North exceeds that allowed by the Sign Code.

Staff has analyzed the surrounding approved CUPs and commercial developments. Recommendations are intended to be consistent with recommendations on the surrounding developments. Staff has not been contacted by residential neighbors concerning this case, but has been contacted by the commercial neighbor to the west, who is requesting cross-lot access.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to the following conditions:

- A. APPROVE the zone change (ZON2004-00040) to "LC" Limited Commercial;
- B. APPROVE the Community Unit Plan (DP-278), subject to the following conditions:
  1. Transportation requirements:
    - a. General Provision #5 shall be amended to add: "All access points, cross lot circulation, and right of way will be in accordance with the City of Wichita Access Management Policy."
    - b. General provisions #13 and 22 shall be amended to strike the words "within the CUP", therefore allowing cross lot access with all abutting commercial properties along arterial streets.
    - c. The CUP shall be amended to provide for a continuous acceleration/deceleration lane on Maize Road.
    - d. The CUP shall be amended to provide for ROW dedication to achieve a 60-foot half width ROW on all arterials tapering to 75 feet half width ROW within 250 feet of arterial intersections.
    - e. The CUP shall be amended to provide for a 25-foot by 25-foot "corner clip" at the arterial corner.
    - f. A General Provision shall be added to the CUP stating: "Guarantees for street improvements on Maize Road and 29<sup>th</sup> Street North shall be determined by the Traffic Engineer at the time of platting."
  2. General Provision #7f shall be amended to eliminate the provision for a 300 square foot sign on 29<sup>th</sup> Street North; and amended to reduce the 20-foot high signs on parcels 1,2 and 3 from 200 square feet to 150 square feet.
  3. General Provision #10 shall be amended to add the words "excluding glass and window area" to the sentence restricting predominantly metal facades from facing Maize Road on 29<sup>th</sup> Street North.
  4. General Provision #14 shall be amended to add the sentence: "A drainage plan shall be submitted to the City Engineer for approval. Required guarantees for drainage shall be provided at the time of platting improvements."
  5. General Provision #19 shall be amended to add the sentence: "Said walk system shall link sidewalks on Maize Road and 29<sup>th</sup> Street North with all buildings in the CUP."
  6. A General Provision shall be added to state: "All utilities shall be installed underground."
  7. A General Provision shall be added to state: "Fire lanes shall be in accordance with the Fire Code of the City of Wichita. No parking shall be allowed in said fire lanes, although they may be used for passenger loading and unloading. The Fire Chief or his designated representative shall review and approve the location and design of all fire lanes. Fire hydrant installation and paved access to all building sites shall be provided for each phase of construction prior to the issuance of building permits."
  8. All property included within this C.U.P. and zone case shall be platted within one year after approval of this CUP by the Governing Body, or the cases shall be considered denied and closed. The resolution establishing the zone change shall not be published until the plat has been recorded with the Register of Deeds.
  9. Prior to publishing the resolution establishing the zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as DP-278) includes special conditions for development on this property.

10. The applicant shall submit 4 revised copies of the C.U.P. to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposal is consistent in terms of zoning, uses, and character with other new development along the west side of Maize Road between 21<sup>st</sup> Street and 29<sup>th</sup> Street North. This proposal is not consistent with the zoning, uses, and character of large lot suburban development to the east and north of the application area, across arterial roads.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use as currently zoned. However, this site is surrounded with approved commercial development to the west and south, and major arterial roads to the east and north, and may not be attractive for single-family residential development.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and commercial development could have a negative effect on the single-family residential uses east of the site, across Maize Road, and north of the site, across 29<sup>th</sup> Street North. However, road improvements, parking lot lighting shielded away from residential use, signage limitations (according to City code), screening and landscaping requirements should mitigate that impact.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "low density residential" development, which is not in conformance with requested zoning. The proposed development is in accordance with the commercial locational guidelines of the plan. The request is not in conformance with the Access Management Policy and Sign Code, but can be modified to meet the requirements of these documents.
5. Impact of the proposed development on community facilities: The traffic increases from the proposed development would be significant. As requested, this proposal would not adequately mitigate traffic increases and associated problems. Staff proposed modifications of appropriate lane widening, accel/decel lanes, and cross-lot circulation requirements should mitigate increased traffic problems. Other community facilities are being extended to serve new development in the vicinity.

The applicant and MAPD staff agreed on the following recommended conditions, revising the conditions listed in the staff report.

In reference to the staff report Condition 1.a., the applicant and staff agree on the following addition to the CUP General Provisions: 5.c. *"Access points provided by 5.a. and 5.b. and required right of way dedications will be in accordance with the City of Wichita Access Management Policy."*

In reference to the staff report Condition 2, the applicant and staff agree on the following addition to the CUP General Provision 7: *"All freestanding signs on 29<sup>th</sup> Street North or Maize Road shall be monument type signs, consistent in appearance with signage in the remainder of New Market Square. One sign on Maize Road may have a maximum height of 30 feet and a maximum sign face area of 250 square feet. All other signs on either street frontage shall have a maximum height of 15 feet and a maximum sign face area of 100 square feet."*

In reference to the staff report Condition 5, the applicant and staff agree on the following revision to the CUP General Provisions 19: *"the development of this CUP shall include a pedestrian walk system linking the buildings on each parcel to all other buildings in the CUP, as well as to sidewalks on both 29<sup>th</sup> Street and Maize Road. As a condition for issuance of building permits on any parcel, a plan showing the walk system for that parcel must be approved by the Planning Director. The plan shall link all buildings on that parcel, connect to adjacent street sidewalks and provide connections to the boundaries of adjacent parcels in the CUP, whether or not there are existing buildings on those parcels. The plan for each parcel shall be compatible with and connect to the walks in any previously developed parcels in the CUP."*

In reference to the staff report Condition 6, the applicant and staff agree on the addition of the following General Provision: *"All new utilities shall be installed underground."*

In reference to the staff report Condition 8, the applicant and staff agree that the applicant shall have two years after approval of this CUP by the Governing Body in which to plat, or the case shall be considered denied and closed.

The applicant and staff agreed on all other staff recommendation Conditions, except for conditions 1.a. and 1.b. regarding cross lot circulation with bordering commercial developments. Staff recommends that the application be approved subject to required cross lot circulation with bordering commercial properties, and the applicant remains apposed to cross lot circulation with bordering commercial properties.

JESS MCNEELY Planning staff. The applicant and staff agreed on all other staff recommendations, except for conditions 1.a. and 1.b. regarding cross lot circulation with the bordering commercial development. Staff recommends that the application be approved subject to required cross lot circulation with bordering commercial properties, and the applicant remains opposed to cross lot circulation with bordering commercial properties.

GEORGE SHERMAN We have submitted a lot of C.U.P. applications, and this is the first time I remember that we have come up here without 100% agreement with staff. Most of them we do as consent items, and I say that so you know that we are not in habit of being unreasonable or uncooperative. The only issue we have is cross lot access with the parcel that is to the west of us.

We think it is unnecessary from a traffic standpoint, and we think it is unwarranted and unfair from a business standpoint. We request that you approve without staff's recommendation for cross lot access.

We are proud of what we have done out at NewMarket. We have spent a lot of money and time to build a center that is consistent and linked together. I think we have six access points right now.

We have tightly regulated the mix of tenants in there. We have limited the center to tenants that fit our concept and tenants that won't conflict with ones that are already there. Had we been willing to compromise some of those things we would be even farther along then we are, but we have stuck with that, and I think we have created a unique center.

The key factor to our success there has been our control. With the exception of the Walgreens way down at the corner of 21<sup>st</sup> Street, we own that entire mile of frontage. When we tell a retailer that his store is the only one of its type in the development, we can keep that promise. If we tell a retailer that we won't put a certain type or store or business in there, we can keep that promise. If a tenant is concerned with the amount of money that we spend to keep up the landscaping and amenities to the level we do, we can point out to him what we have done and what we will continue to do, and tell him that all the other tenants are the same way.

When we insist that a tenant adhere to our strict Sign Code or when we tell a tenant we won't have another access point to give them direct access, we can assure him that we won't do that for any other tenant, and that we will not clutter that frontage with signs or excessive access points.

We think requiring us to physically connect to another developer and to a competitor especially could undermine the restrictions, controls, and the promises that we have made. Our tenants know that if we agree to exclude a specific competitor, that competitor can go right across the street and we can't control that. He could go around the corner and we couldn't control that. But he can't be attached to our property or have access to his property, to his place, through our property. With this, if we have a connection back into that, we can promise one tenant that we wouldn't put another one there, and he could be right around the corner and share the same driveway through there.

We are not opposed to this development. When their C.U.P. was submitted and being considered, we obtained a copy of it, and reviewed it and we found a few things we didn't necessarily agree with but we have always held the believe that in most cases it is inappropriate, and maybe a little disingenuous, for one developer to interfere with a competing developer's plans as long as he is following the rules that have been set out.

The version that we received of the C.U.P., that originally submitted version did not provide for cross lot access. That was added somewhere in the process and I don't recall it coming up at the meeting, but the final version does have provisions for their access into our property. If we had known that, we would have been here and spoken against that at the time. How that property develops or what tenants occupy it is their business, we don't think it is right or necessary to connect ours to it. We don't want to be connected to it either physically or by inference.

Maize Road is a major arterial street, it is clearly a superior location for any retailer but 29<sup>th</sup> does not have that distinction. It is an arterial street, and it will be developed with some commercial at some of the corners but you can look at the character all the way from Ridge Road and on, but it is going to have primarily residential backed up to it. Some office and maybe some multi-family may be as buffers, and this Spencer's Cove Retail but it is not going to be the street that Maize is, and that is why our primary objective was to buy that frontage.

Spencer's Cove has frontage only on 29<sup>th</sup> and, I guess, at gaining access through our property could help its marketability or its value but I don't believe that we should be required to help the marketability or value of a competitors piece of ground. In our opinion, connecting the two properties would have little if any positive impact on traffic flow or safety and not connecting them would have no negative impact. There is already a signal at Central Park that we paid for.

We think the only thing that connecting the properties might do is give people an opportunity to try and avoid that light by cutting through the two properties and around the corner, and I don't think any of us want that to happen. The Spencer's Cove C.U.P. has permitted six access points along its frontage, and I can't imagine that they are going to have any problem getting in and out of the property in any direction they want to go, and they will have protected turns at the intersection with Maize Road.

You have our conceptual plan, and our thinking at the moment is to develop this as an upscale corner of New Market Square but have its own little character. The stores oriented toward Maize Road and a service drive in the rear. For continuity we plan to continue the masonry wall that we have behind the rest of the center. We plan on having a drainage swale along the backside of our property and where it matches up there, for drainage off and take it around to the drainage ponds. Having to bridge over that or build a culvert is another potential problem.

The Access Management Policy does not require cross lot access but it does encourage it, and they specifically mention that the regulation is meant to be a guideline, not a firm rule. Even for the portions that are intended to be firm there is a provision that says, "Deviation will be allowed in situations where the character of the site development, street, or area presents unusual conditions." We think this situation is unique and warrants a deviation we think we have followed and in most cases have exceeded the recommendation over the entire 100-acre development that we have there.

MITCHELL What is the purpose of moving traffic from one commercial area to another other than to limit the access to the section line or to the arterial roads?

SHERMAN I think there are a couple of reasons and probably the one that staff would mention is if a shopper in one shopping center wants to make a stop in another shopping center he doesn't need to get out onto the arterial street and make a movement and then another movement to get back into the other commercial development. We have seen this applied within C.U.P.'s, and this was the first time that we have seen it applied to adjacent ones, and this is the reason for the delay in this, and we thought the wording that we submitted originally limited the cross lot access to our piece, and staff pointed out that they interpreted that it meant any adjacent commercial so we pulled it back and changed the language.

MARNELL In looking at your drawing with your parking lot layout plan, there is no access for consumers when they are in the north end of that lot. To get to 29<sup>th</sup> Street they have to go back and go out on Maize?

SHERMAN That is the way that we have set it up because there is going to be 100,000 feet of retail there. We are trying to separate that traffic from the delivery traffic in the back. We are finding more of these national retailers are using semi's even when they are delivering two boxes of something because that semi is on its way from Minnesota to Dallas.

MARNELL But for someone to get to 29<sup>th</sup> Street they have to come down and go on the service road all the way behind this entire center to get to 20<sup>th</sup> Street?

SHERMAN That is the way we have it laid out at the moment. The can also make a left at Maize Road and turn at the light.

MCKAY They are requiring a cross lot between there and Spencer's Cove, is there any reason why there couldn't be a cross lot from the service road?

SHERMAN We prefer not to but there is a drainage ditch that would affect it. There is also going to be a lot of filling that will be going on here, and there are some complications with elevations. We are not saying we don't ever see this connecting. We are saying we don't want to be required to provide a connection and let them decide how our site is going to get developed.

WARNER It looks to me the way you have concept service road is going to be used a lot more than you want it used by the people in the shopping center to get to 29<sup>th</sup> Street. Unless you load that thing up with bumpers or something, that is what they are going to use to get to this other area.

SHERMAN If they use that, the only way that they can get on 29<sup>th</sup> Street, the only direction they can turn is right and we think that will soften that to some extent. Somebody coming from the west can easily make a turn right at the light and enter the project from the front. The internal circulation will have to be approved by staff.

ROBERT KAPLAN I am here today on behalf of Spencer's Cove. The only issue we have with New Market Square with the Limited Commercial and the Community Unit Plan is the cross lot circulation. Beyond that we have nothing further to discuss. I did not understand why they were opposed to the cross lot circulation because I couldn't think of a reason why they wouldn't want it. The letter I got back simply said "It is not in our best interest". That does not convey anything to anybody with that kind of a statement or give me any specific reason. George says he doesn't want the competition from Spencer Cove. Competition is a good thing but not a criterion for adjusting or eliminating cross lot access because they are concerned about competition. My initial thought was maybe they thought the uses weren't compatible. We had uses permitted in our C.U.P. that were uses that they didn't think were appropriate, so I compared the two C.U.P.s plans and I found the uses highly compatible. In fact, the uses in Spencer's Cove are somewhat more restrictive than the uses permitted in New Market.

We have the Access Management Policy, which MAPC initiated and we have it in the Comprehensive Plan and it is there for a reason. Cross lot is good for commercial retailers, and it is good for traffic management. It is good for accel/decel lane management. I think there ought to be an effort to arrive at a cross lot between Spencer Cove and New Market.

I have supplied you with a letter from the R.H. Johnson Company, and that letter is an expression of interest to Spencer Cove, but you will note in that letter that if there is no cross-lot circulation then that will lessen considerably their interest in the project. I suggest that the cross-lot remain a condition, and if in fact it can't be accommodated, adjusting or amending C.U.P.s is not a major thing, we do it all the time. If we come up with a cross-lot agreement, and this concept turns out to be their real plan, and that is what they permit, and they say we can't move the service road or eliminate the service road. We can't handle it. I am done, and then it could be adjusted or amended.

GAROFALO Can you explain your initial comments about compatibility between the two C.U.P.s.

KAPLAN The uses in the two C.U.P.s permitted uses are virtually identical in that they say all uses permitted within the Limited Commercial District except, and then they prohibit the traditional things that we have always prohibited: the taverns, car washes, night clubs and things of that sort. What I am saying is that we have all uses permitted within the Limited Commercial district, and New Market has all uses within the Limited Commercial, except our prohibition list is a little bit longer. If their concern was that we are going to put in uses that are not compatible with New Market that is not a valid concern because the C.U.P.s are virtually identical.

GAROFALO Mr. Sherman is talking about making promises to his tenants that he is not going to have any competitive businesses right adjacent in New Market, and he thinks that it may be the same type of businesses in Spencer's Cove.

KAPLAN I hear George saying that he doesn't want the competition between the businesses but since when did competition between retailers become land use criteria? I think for the commercial retailer cross-lot is a desirable thing. For access management and traffic management and keeping traffic on the site through interior circulation and off the arterial streets is good.

MARNELL Do you have a copy of the conceptual site plan? If I am identifying the two spots where you are looking for the cross lot access, it would be along this east line of the Spencer Cove C.U.P. and the property line for Spencer's Cove is to the west of the drainage swale? Who would be responsible for any bridges and the cost incurred in the maintenance of those to connect those two passageways if a cross lot went through there?

KAPLAN That is why I wanted to discuss this with Slawson Company, with Mr. Sherman, and Rob Hartman and Spencer Cove; a cross lot circulation agreement, because when you require cross lot you suggest that we need to engage in some conversation to determine if we can enter into a cross lot circulation agreement. The letter I got said we will met with you but it is a waste of time because we are opposed to cross lot circulation, and that we are not going to do it.

MARNELL We are normally talking about connecting two parking lots where the pavement is going across, and this is a different request than I have seen in the time that I have been on this Commission. I wouldn't be opposed to the fact of cross lot circulation but I wouldn't impose the cost of putting bridges and maintaining those bridges on the property owner that is involved with this development for the benefit of another development. I am not sure in this case that the benefit occurs to the general public, as we normally view them in cross lot circulation, just because of the physical characteristics to this one piece of land.

KAPLAN I don't know how it is going to development. I just got the concept plan today, and I don't know anything about the Q on that drainage swale, but I think there ought to be an attempt to negotiate some cross-lot circulation. Baughman Company, who did Spencer Cove, and PEC who is working with New Market ought to meet and discuss that.

MARNELL I would be in favor of cross lot but not in favor of imposing the cost in this unique circumstance to this developer. The cost should be born by the Spencer Cove property and not this applicant.

KAPLAN Give us a chance to try.

MCKAY This plan shows the fence all along the west edge of this property, and if we are talking about a cross lot does that fence go away? Why are we showing a screening fence between two commercial properties if staff is requiring cross lot approach into each one of the units; why do we have the wall there?

KAPLAN I don't think there ought to be a screening wall there but I think that is a subject for negotiation. I don't expect this Planning Commission to draw my agreement or to negotiate my agreement. I think that you simply have to require that the applicant attempt to negotiate it because if it doesn't work out, and it can't be done, then we can adjust or amend.

BARFIELD How long do you think it will take for you and them to work things out?

KAPLAN Hopefully before this goes to WCC. I will make the effort. My client will make the effort to sit down and discuss it, and we can do it before we get to City Council, and that way it won't hold them up. If we can't come to an agreement and they don't want to change their position that can be taken up at City Council.

SHERMAN Mr. Bannon has owned this property for sometime. We have had numerous discussions about access through there. Shortly after he got the property, I think he realized that it would be more valuable if he had access to Maize Road, and I don't dispute that, but I just don't think it is my position to make his property more valuable. There may very well be a plan that makes sense for both of us to connect our properties, and I have told Mr. Bannon repeatedly if he comes to me with a specific tenant and a specific plan, and a specific layout, that we will talk to him about it. That won't change whether you require this or not, although it may after today I am not sure.

What we object to is being required to connect to another development. Inside New Market we have connected everything. When we have sold pieces to other people. We have required them to connect to us. We can control that. We can tell them what elevation to build at. We can tell them what their building will look like. We can tell them where the connection has to be. In this case, who decides where it is? If they build first and build a driveway, do we then have to tailor ours to meet that? I think without anything specific that both of us can talk about it. It is just not right to require it. I think it is a waste of time to try and sit down now because neither of us have anything specific.

I haven't seen the letter from R.H. Johnson but that might be a tenant we are trying to get too. If he can get him by getting connection through our property then I am sure he would like to do that, but maybe we are trying to get him to another part of our deal. We don't mind competition; everybody has competition. Some retailers don't like other retailers close to them.

JOHNSON The drive on 29<sup>th</sup> Street is right-in and right-out?

SHERMAN That was by the Access Management Policy because of its proximity to Maize Road.

JOHNSON It appears to me that all the deliveries are going to have to come from the west then?

SHERMAN The deliveries can come in through a number of ways. There is an entry in the Target parking lot; there are two driveways through our property that they can take and come to the south end of the property. The deliveries that exit on 29<sup>th</sup> Street would have to go east but they would have to do that unless they were to wind through that other development somehow.

BARFIELD You are not willing to sit down with Mr. Kaplan at this time to discuss a cross lot circulation agreement?

SHERMAN We are willing to sit down with him but I think it is a waste of time. If we sit down and talk we will be talking what ifs and that doesn't make any sense.

BARFIELD What is the basic advantage to the City to have the cross-lot agreements?

MILLER The simple answer would be that if you can go from parcel to parcel then you don't have people going out to the arterial street then driving around to get to the adjoining parcel that once you are on there, you may be 100-200 feet away and it may take you 1/8 mile to drive around to get to it. It is convenience and a safety factor to minimize the number of conflict opportunities at intersections.

SCHLEGEL By example, if I am out and I pick up my dry cleaning at the Slawson property, and then I want to go get a haircut on the Spencer Cove C.U.P. then I have to go out on Maize Road, make a left to go north on Maize, go up to 29<sup>th</sup> Street, make a left, west on 29<sup>th</sup> Street and then make another left, for my hair cut. I have just made three left turns in order to go from one shopping center to the other. If there was cross lot access between those two shopping centers then it is a whole like easier and safer maneuver and less conflicts with traffic and better.

WARNER This is a conceptual site plan and it looks like the concept here is to design something that won't work with your neighbor. I am concerned about the cost of going over the drainage swale. I can't imagine that costing nearly as much as this quarter mile of fence. I think we ought to put it in there and let them talk about it. I think this is designed purely to discourage this access control.

MARNELL I am in favor of cross lot easements. I think those clearly serve the public, which we are here to uphold, and not either one of these developers. I don't know what that swale is going to look like, and this seems like a unique circumstance because of that. I still think we should impose the requirement for them to work on that, and the cost, should this come to bear, should be on the party that is going to benefit from it. To me, it shouldn't be this developer to build bridges to connect to the other one.

BARFIELD I think cross lot circulation would benefit both entities.

MCKAY To me the cross-lot is one thing but the fence, but you talk about something that is really isolating a piece of property. First of all, you can do a cross over to it. Secondly, there is a swale to it and then you are going to put a fence up to block it off. If this is even close to what it shows here, they have theoretically blocked everything off to Maize Road on Spencer's Cove to begin with. Because the way the buildings are going to be facing, it is completely blocked Spencer's Cove from any exposure on Maize Road which is a main thoroughfare driving through. I think the fence should not be a requirement between the two pieces of property, and that there should be cross-lot access.

BISHOP I think that the fence is only required when it is a buffer between the commercial and the residential property.

MCNEELY The fence is not required, that is a part of the applicant's conceptual plan.

DUNLAP Mr. Sherman will respond to that fence question?

SHERMAN The fence is not required. We have fencing behind all of the rest New Market; a lot of it where it is required, but there are places where it is not required we have put the wall up all along there, and for continuity, our intention was to carry the wall right down through there. This is a conceptual plan, and it was not put together to totally block his property but it was put together to make our property one, and make it feel more a part of New Market Square to the south.

DUNLAP I appreciate the cross-lot circulation, and I am one of those people who like to use it. But the other side of this is the continuity of the center all of the way from 21<sup>st</sup> Street to 29<sup>th</sup> Street. I can't overlook the fact that this developer went out and spent the money and bought the property and is developing it with color, design, occupancy and even a fence to make it all look the same to enhance is property which he bought, and he spent his money to develop. Is there a possibility that the Spencer Cover people would dearly love to associate them with this development by having cross-lot into it so it looks like they might be part of it? He can't control what they do over there.

WARNER Did we not require Spencer Cove to have cross-lot access?

**MOTION:** To approve, including the agreed upon revisions and transportation requirements 1.b. that stay as it is, but we will add an additional wording following arterial streets that says the parties will negotiate in good-faith involving the location of the cross-lot easements, and the cost there associated with.

**MARNELL** moved, **BISHOP** seconded the motion.

BISHOP I think I am willing to second but I have a question. Commissioner Marnell you mentioned specifically 1.b. and my question is what about 1.a., which refers to access points, which I think, is pretty well moot?

MARNELL I don't know that adding 1.a. needs to be added.

SCHLEGEL I think 1.a. is just a general reference to the Wichita's Access Management Policy that whatever is done as far as cross-lot access be done in conformance with that policy. As George Sherman indicated, that policy is meant to be a set of guidelines.

MCNEELY That is correct, and it has already been agreed upon that circulation plans prior to building permits have to be approved by the Planning Director similar to most other recent C.U.P.s.

BISHOP So the motion would also include 1.a.?

MARNELL No, just 1.b. I think 1.a. is a general provision and 1.b. is where we are talking about the adjacent properties.

DUNLAP Commissioner Bishop, is your second including only 1.b. then?

BISHOP I will go ahead and second.

GAROFALO If I understand this revision, is that staff agrees with the revision in 1.a.?

MCNEELY Yes, staff agrees to the revision in 1.a.

GAROFALO Then 1.b. would be included in the motion?

MCNEELY As I understand it Commissioner Marnell would like to modify 1.b. is the only change.

MCKAY Commissioner Marnell, in your motion you mentioned no cost to the cross over being to the applicant and would go back to Spencer Cove, do you want to make that part of your motion? Subject to negotiation and I agree 100% if the applicant is giving up something for the benefit for somebody else, then they ought to be responsible for the money to make the connection.

MARNELL I don't disagree with that but I don't know how to get it down to the fine detail because there will be some cost to both sides making the connections, but if there are bridges and that type of infrastructure and maintenance I clearly think the benefit is accruing to the property to the west, and they should therefore bear the expense.

MCKAY Couldn't we just say that when and if the agreement or physical connection has to be paid for by Spencer's Cove. They are providing access and any physical stuff, bridges, has to be paid for by Spencer's Cove.

MARNELL I would modify my motion to include that wording if the second will agree.

BISHOP I will not support that modification and I think ideally the two parties can get together and work out between now and the time of platting. I withdraw my second.

**MOTION:** To approve, including the agreed upon revisions and transportation requirements 1.b. that stay as it is but we will add additional wording following arterial streets that says the parties will negotiate in good-faith involving the location of the cross-lot easements, and the cost there associated with and that when and if the agreement or physical connection has to be paid for by Spencer's Cove. They are providing access and any physical stuff, bridges, has to be paid for by Spencer's Cove.

**MARNELL moved, MCKAY seconded the motion.**

WARNER I don't think it is our place here to do the negotiations and require one side to pay and the other side not and that is the purpose for them to sit down and talk about and who is going to pay for it.

MILLER Clarification, if they don't reach an agreement that is okay and it is approved without that requirement? Because this motion just says they have to sit down and negotiate in good faith. What if they don't come to an agreement?

BARFIELD I think Mr. Kaplan said that they will bring that up at City Council.

**SUBSTITUTE MOTION:** To approve including the agreed upon revisions and transportation requirements 1.b. and additional wording that says the parties will negotiate in good-faith involving the location of the cross-lot easements, and the cost there associated with.

**BARFIELD moved, BISHOP seconded the motion.**

**SUBSTITUTE MOTION: carries. Vote (6-5)**  
**JOHNSON, MCKAY, DOWNING, MARNELL, DUNLAP, opposed to substitute motion**

5. **Case No.: CON2004-27** – Chisholm Trail Radio Control Club request Sedgwick County Conditional Use for outdoor recreation on property zoned "RR" Rural Residential on property described as;

A tract in the south half of the Southeast Quarter of Section 33, Township 29 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas: Beginning at the southwest corner of said quarter section; thence North 90 degrees East (assumed) along the south line of said quarter section, 951 feet; thence North 17 degrees 33'28" West, 439.60 feet; thence N 00 degrees 35'49" West, 87.85 feet; thence N 16 degrees 17'08" West, 137.27 feet; thence N 17 degrees 01'37" West, 605.55 feet; thence N 12 degrees 42'31" West, 105.49 feet to the north line of the south half of said quarter section; thence N 89 degrees 53'08" West, along the north line of the south half of said quarter section 568.62 feet to the west line of said quarter section; thence S 00 degrees 25'35" West, along the west line of said quarter section, 1321.81 feet to the point of beginning; EXCEPTING THEREFROM a tract of land in the Southeast Quarter of Section 33, Township 29 South, Range 1 West of the Sixth Principal Meridian, Sedgwick County, Kansas described as follows: Commencing at the Southeast corner of the Southeast Quarter of Section 33, Township 29 South, Range 1 West; Thence West along the South line of said Southeast Quarter and on an assumed bearing of N 90 degrees 00'00" W, a distance of 1289.86 feet, to a point; thence North, on a bearing of N 00 degrees 00'00" W, a distance of 25.00 feet, to a point on the existing right of way line lying along the South side of said Southeast Quarter and the point of beginning; Thence West along said existing right of way line and on a bearing of N 90 degrees 00'00" W, a distance of 950.00 feet to a point; Thence Easterly, on a bearing of N 83 degrees 20'44" E, a distance of 302.03 feet, to a point; Thence East, on a bearing of N 93 degrees 00'00" E, a distance of 300.00 feet, to a point; Thence Easterly, on a bearing of S 84 degrees 17'22" E, a distance of 351.75 feet to the point of beginning. Generally located North of 119<sup>th</sup> Street South and west of Ridge Road

**BACKGROUND:** The applicant is requesting a Conditional Use to allow a "radio controlled model airplane field" on a 23-acre unplatted tract zoned "RR" Rural Residential. The subject property is located on the north side of 119<sup>th</sup> Street South and approximately ¼-mile west of 71<sup>st</sup> Street South, in an unincorporated part of Sedgwick County. The applicant proposes to use the 23-acres for the flying of radio-controlled airplanes, by members of the Chisholm Trail Radio Control Club of Clearwater. The applicant's site plan is attached.

The flying of radio-controlled airplanes is considered an outdoor recreation and entertainment use under the Unified Zoning Code (UZO). The UZO defines outdoor recreation and entertainment as a privately owned establishment offering recreation,



entertainment or games of skill to the general public or members wherein a portion of the activity takes place in the open. A Conditional Use is required for outdoor recreation and entertainment in the "RR" Rural Residential zoning district. The UZC indicates that a Conditional Use for outdoor recreation and entertainment shall be limited to a use that the Planning Commission has determined will not produce undue noise or attract large numbers of spectators.

Section III-D.6.o. of the UZC (attached) indicates that a Conditional Use for outdoor recreation and entertainment shall comply with six standards. The Conditional Use request does not conform to two of the six standards. First, the subject property is not contiguous to an arterial street or expressway and secondly, the applicant proposes a gravel drive and parking area. The applicant requests that these standards be waived. UZC standards for a Conditional Use can only be waived by the Board of County Commissioners upon receiving a favorable recommendation from the Planning Commission.

The applicant's site plan shows no lighting, no bathroom facilities, no trash receptacles, no buildings, no signs, no gates or fence and no setbacks on the subject site. The site plan does show the runway area, a cul-de-sac drive off of 119<sup>th</sup> Street South into the site, and parallel parking running along the east side of the drive. The site plan also shows existing trees lines along the west and east sides. The applicant proposes to use the site during the daylight hours all year.

The Chisholm Trail Radio Control Club of Clearwater is a private club, which would allow only its 25-30 members use of the field. Guests, when with a member, are allowed to use the field three times, after which they have the option of joining the club. The club allows only 4-5 model planes to fly at any one time. Typically the club members use the flying field in small informal groups of, with 4-5 flying their model planes and the rest waiting their turns. The model planes cannot be larger than 55-pounds in weight, with an unlimited wingspan allowed within the weight restriction. The model planes engines are powered by gas, electric or an alcohol-nitro mix. All engines must be muffled, no open exhaust is allowed. The club has stated that the resulting noise level is similar to a gas powered, muffled weed eater and, per the club's rules, cannot exceed 9db when 6-feet from a plane. Once a year the club host a "jumbo fly in", which attracts a total of 60 – 80 model plane flyers for a weekend in July. All flyers, during the "jumbo fly in" must be members of the Academy of Model Aeronautics; AMA. The club is a member of the AMA, which is a national organization from which the club has drawn its bylaws. The AMA is also the insurance writer for the club. The club had been in Clearwater, until recent development (new high school and single-family residential around the school) around the park where it was located became too dense. The City of Clearwater has reported the applicant to be an excellent tenant.

The subject site is located just north of the Sedgwick – Sumner county border, which is 119<sup>th</sup> Street South. 119<sup>th</sup> Street South is an Ohio Township dirt road. The surrounding area in both counties is rural in character, with most of the land being planted for crops. Less of it is pastureland with a few head of cattle, some sheep and scattered farmsteads. Mature mixed hedge and tree lines following drainage channels are common in the area. The subject site has a partial hedge on its west side and a tree line following a drainage channel on its east side. The subject site's north side is open to abutting field that is being planted. Its south side, across 119<sup>th</sup> Street South, is open to a planted field in Sumner County. The nearest farmstead is located approximately ¼-mile west of the subject site on the south side of 119<sup>th</sup> Street South, in Sumner County. The other nearest farmsteads are, another one in located in Sumner County approximately ½-mile southeast of the site and a farmstead (built 1900) located approximately a mile northwest of the site, on the northwest corner of 111<sup>th</sup> Street North and 71<sup>st</sup> Street West. An unusual feature of the area is the condition of 111<sup>th</sup> Street North, west of the just mentioned farmstead. Here 111<sup>th</sup> Street North resembles a farmer's field drive (tire ruts marking its location) more than a public right-of-way; its condition re-emphasizes the rural character, of this sparsely populated part of Sedgwick County. The site and the area are within the 100-year flood boundary.

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "RR"	Agriculture
SOUTH: Sumner County	Agriculture, farmstead
EAST: "RR"	Agriculture
WEST: "RR"	Agriculture

**PUBLIC SERVICES:** Access to the subject property is from 119<sup>th</sup> Street South, an unimproved township road. 71<sup>st</sup> Street West is a paved two-lane Sedgwick County Highway. There are no traffic counts for this intersection. The subject property is located outside any rural water district service area. Public sewer service is not available to serve the subject site.

**CONFORMANCE TO PLANS/POLICIES:** The Sedgwick County Development Guide of the Comprehensive Plan designates this area as outside any Small City's Growth Area and Zoning Area of Influence. The policies of the UZC allow outdoor recreation and entertainment as a Conditional Use if the proposed use is located on an arterial street, complies with lighting and noise standards, has paved access and parking, has reasonable operating hours, and is properly maintained. The proposed use does not entirely conform to the policies of the UZC because it is not located on an arterial street and an unpaved access drive and parking area is proposed. The use as proposed as a private club will not attract large numbers of spectators nor produce undue noise, which would adversely effect this rural area of Sedgwick County.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED, with the following conditions:

1. The Conditional Use shall be restricted to a privately owned area for a radio controlled model airplane flying field. The Conditional Use shall authorize no other outdoor entertainment and recreation activities.
2. All requirements of Section III.D.6.o. of the Unified Zoning Code shall be met, except as modified by the conditions of the Conditional Use.
3. Operations shall be year round. Daily operations shall be limited to daylight hours.

4. Waive the condition requiring a concrete or asphalt drive and parking area. The access drive and parking area shall be surfaced with an all weather surface approved by the Sedgwick County Fire and Public Works Departments. The access drive shall be a minimum of 24 feet wide. The parking area shall provide a minimum of 25 parking spaces and shall provide a turn-around area for emergency vehicles as approved by the Sedgwick County Fire Department. No parking shall be permitted on the access drive, turn-around area, or any area not improved with an all weather surface. The exception to parking off the approved all weather surfaced parking area will be during the once a year, weekend "jumbo fly in" event. The access drive and parking area shall be maintained in good condition and free of all debris, weeds, trash, and obstructions. The drive shall be elevated per the recommendation of the Sedgwick County Fire and Public Works Department in reference to the site's location within the 100-year flood boundary.
5. A minimum of one chemical portable toilet shall be provided, except during the once a year, weekend "jumbo fly in" event, when two chemical portable toilets shall be provided. The applicant shall maintain an ongoing maintenance contract for removal of waste from the portable toilets and the disposal of waste shall be in accordance with Sedgwick County sanitation codes. Location of the portable toilets will be per the recommendation of Sedgwick County Code Enforcement.
6. The sale of concessions shall be incidental to the outdoor entertainment and recreation use and shall be in conformance with applicable health regulations. The sale of alcoholic beverages is prohibited.
7. A sign giving the name of the club and the club's phone number shall be permitted at the 119<sup>th</sup> Street South entrance to the access drive. The sign shall be a maximum of six square feet in size and six feet in height. No temporary banners are permitted.
8. Approval of the Conditional Use constitutes a waiver of the standard requiring a location contiguous to an arterial or expressway.
9. Prior to the commencement of operations, the applicant shall receive approval of a revised site plan by the Planning Director. The revised site plan shall be submitted for approval no later than 60 days following approval of the Conditional Use. The revised site plan shall reflect all conditions of approval and shall conform to all requirements of the "Site Plan Guidelines for Conditional Use Application."
10. The site shall be developed and operated in general conformance with the approved site plan. All improvements shall be completed prior to the commencement of operations.
11. The site shall be developed and operated in compliance with all federal, state and local rules and regulations.
12. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the surrounding area is rural. All properties surrounding the subject property are zoned "RR" Rural Residential are used for agriculture with three farmsteads (two in Sumner County) within a mile of the site. Most of the agricultural land is used for crops with small areas for pasture. The site sits just inside Sedgwick County on the Sedgwick – Sumner County's border, on the north side of 119<sup>th</sup> Street South. The area is probably one of the least populated in Sedgwick County.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "RR" Rural Residential and is presently used for agriculture. The subject property is suitable for the agricultural use to which it has been restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed use needs a location that is removed from any residential developments and this site qualifies. The fact that the area is located in the 100-year flood boundary and outside any Small Cities' area of growth and zoning influence makes the area unlikely to change over in the near future from its current agricultural uses. The conditions of the Conditional Use should minimize the negative effects of the proposed use on the area.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Unified Zoning Code makes contains specific policies pertaining to outdoor entertainment in the "RR" Rural Residential zoning district. The Conditional Use request conforms to these policies, with the exception of it not being located on an arterial street and an unpaved access drive and parking area is proposed.
5. Impact of the proposed development on community facilities: Increased traffic during the "jumbo fly in" weekend will increase the maintenance demands on the unimproved township road fronting the subject property.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MARNELL** seconded the motion, and it carried (11-0).

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6. **Case No.: ZON2004-46** – Randy Pauly, Price Trucking; AM Consulting Inc., c/o Tim Austin (agent) request Zone change from “SF-5” Single-family Residential to “OW” Office Warehouse on property described as;

Lots 4 and 5, Block B, Halford Homesites, Sedgwick County, Kansas. Generally located at the intersection of South Exchange and West MacArthur (600 W. MacArthur).

**BACKGROUND:** The applicant requests “OW” Office Warehouse zoning on a 1-acre platted site currently zoned “SF-5” Single-Family Residential, for an office and warehouse use at a converted fire station. The application area is North of West MacArthur and west of Exchange (600 West MacArthur), approximately ¼ mile west of I-235. The application site is a former City of Wichita fire station, built in 1967, and last used in February of 2003.

North of the application area is a large mobile home park; south of the application area, across MacArthur are several large lot single-family residences and an apartment complex (DP 72). East of the application area are several large lot single-family residences, vacant land, and I-235. West of the site is vacant GC zoned property and a GI zoned natural gas facility.

**CASE HISTORY:** Platted as lots 4 and 5 of the Halford Homesites Addition in 1950.

**ADJACENT ZONING AND LAND USE:**

NORTH: “MH”	Manufactured Home	Mobile home park
SOUTH: “SF-5”	Single Family Residential	Single-family residential
	“MF-29” Multi-Family Residential	Apartment complex
EAST: “SF-5”	Single-Family Residential	Single-family residential
WEST: “GC”	General Commercial	Vacant commercial land
	“GI” General Industrial	Natural gas facility

**PUBLIC SERVICES:** Current traffic counts on this segment of MacArthur are 10,135 vehicles per day. MacArthur is a 4-lane, section line arterial street at this location with an existing half width right of way (ROW) of 40 feet. The Access Management Policy recommends a 60-foot half-width ROW for all arterials. The 2030 Transportation Plan indicates that MacArthur will remain a 4-lane arterial at this location.

All other normal public services are available at the site.

**CONFORMANCE TO PLANS/POLICIES:** The “Wichita Land Use Guide, as amended 1/02” of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this parcel as appropriate for “public/institutional” development.

The proposed OW zoning would permit office and warehousing uses. The Office Locational Guidelines of the Comprehensive Plan recommend that office sites be generally located adjacent to arterial streets. The plan recommends that large-scale office development should be encouraged to locate within the CBD. Local, service oriented offices should be incorporated within or adjacent to neighborhood and community scale commercial development. And, low-density office use can serve as a transitional land use between residential uses and higher intensity uses.

The Industrial Locational Guidelines of the Comprehensive Plan would apply in this case concerning warehousing uses. The Plan recommends that industrial uses be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility truck lines, rail spurs, airports and as extensions of existing industrial uses. Industrial traffic should not feed directly into local streets in residential areas. Industrial uses should be generally located away from existing or planned residential areas, and sited so as not to generate industrial traffic through less intensive land use areas.

The Unified Zoning Code (UZC) would require compatibility setbacks between non-residential and residential development, as well as a screening requirement from the residential use to the north. Conformance with the Landscape Ordinance at this site would only be required if expansion of the existing building exceeds 30 percent, or if improvements made increase the facility value by 50 percent.

**RECOMMENDATION:** The Unified Zoning Code (UZC) classifies OW zoning as less intense than GC zoning, which borders the application area to the west. The proposed zone change is in conformance with the recommended office and industrial locational guidelines. Office and warehouse use at the application area could have fewer negative effects on residential neighbors than the previous fire station. Office and warehouse use at the application area could potentially increase traffic on this section of MacArthur. Increased ROW at the application area could provide for future widening if necessary, allowing for a center turn lane.

One residential neighbor, from the south side of MacArthur, contacted MAPD with several concerns. The neighbor’s concerns were the potential negative effects of lighting, noise, late hour operations, and flooding issues worsened due to increased development in the area.

Based on these factors, plus the information available prior to the public hearing, staff recommends the request be APPROVED subject to dedication of 20 feet of right of way on West MacArthur Road.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: This proposed zoning and land use is not out of character with the MH, GC, and GI zoning and land uses nearby. Permitted uses in OW zoning are less intense than those in GC zoning. Therefore, this zone change could potentially buffer single-family residences east of the application area from more intense uses further west.

2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with single-family use as currently zoned. However, the former fire station site is more than likely not attractive as for a single-family use due to MH, GC, and GI zoning and uses nearby. The application area may also not be attractive for single-family use due to its location on a 4-lane arterial street.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Rezoning and office/warehouse development could have negative effects on the single-family residential uses east of the application area, across Exchange; south of the application area, across MacArthur; or the mobile home development north of the application area. The Unified Zoning Code will require compatibility setbacks between non-residential and residential development, as well as a screening requirement from the residential use to the north. If traffic increases at the application area require a central turn lane on MacArthur, dedication of right of way will assist in making that improvement possible.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies this area as appropriate for "public/institutional" development, which is not in conformance with requested zoning. The proposed development is generally in accordance with the office and industrial locational guidelines of the plan.
5. Impact of the proposed development on community facilities: The proposed rezoning could increase traffic at this location on MacArthur. Proposed right of way dedication would bring this portion of MacArthur into conformance with the Access Management Policy, and would allow for a future central turn lane, should one become necessary.

MARNELL Did the City sell this piece of property to the applicant sometime following February 2003?

MCNEELY Yes, when the applicant first applied, I don't know the exact date of closing of the sale, but when the applicant first applied, our data base was still showing ownership of the property under the city so it has been fairly recent, probably within a couple of months of when the applicant applied.

MARNELL This seems like the most silliest thing I have seen. For you to come here to ask to steal 20 feet of property you just sold these people is outrageous. You could have excluded it, you being the City, and excluded it from the sale. We will sell you the property less that 20 feet to begin with, and they could have bought the property or not. But now you are trying to get property that they paid you money for and you are trying to get it for free.

MCNEELY A sale is not a zoning or planning issue.

MARNELL So nobody else in the City understands the right-of-way requirements when they sell property; when they sell property owned by the City so they can retain that land to begin with which they already own and have title to?

BISHOP I think that sounds like a good discussion for the Development Coordinating Committee to discuss especially if John Philbrick attends those meetings.

KIM EDGINGTON, AM CONSULTING It seemed to us a contradiction that this property owner was required to buy this land, and then has to turn right around and give it back to the City, and in essence paying for it twice. Otherwise we are in complete agreement with staff comments, and we do agree that this can serve as a good buffer, a step down from the General Commercial that is to the east. Mr. Pauly owns a trenching company and he is the only full time employee, and there are two part-time employees, so the traffic generated by this use will be very little. The property has sat vacant for almost two years now, and he is anxious to get started. His changes to the building will be some interior changes to the building.

FLOYD PENNINGTON, 627 W. MACARTHUR, WICHITA KS 67217 I thought I was in opposition to Price Trucking. I inquired with the City of Wichita about buying this property about a year ago, and I was told that it was \$90,000 and I would have to put up some performance bonds to take out the underground fuel cells. Recently they have put in a new elementary school up on Gold Street, and they have a new traffic light at Gold and MacArthur. Down here south of MacArthur is Boeing Employees Club, and they have many events down there where hundreds of cars go. This right here, in the block of red line (referring to the map), is the mobile home park. If you have trucks coming out of this property and going into the center lane of Gold Street, they will be blocking the vision of cars coming south, and they will not be able to see. The traffic goes extremely fast here. We have several accidents on this street. We just can't have any more traffic. There are too many children in the area and there is a safety issues concerning their well being.

BARFIELD If this is not Price Trucking and a one-man operation, would you still be in objection?

PENNINGTON If it is a business where there are 10 trucks a day, like small trucks, I probably wouldn't object. But if they are going to do Price Trucking bob trucks back to back, running all night, pulling out of there, then I do object.

JO SUSAN MURDOCK, 609 W MACARTHUR RD I live right across the street and I bought this property about a year ago. For the main reason it is like living in the country I have a big backyard. To hear that now I am going to have a truck line moving in across the street from me I am not happy. My bedroom faces that firehouse. I am right across the street. The traffic on MacArthur is awful now. I am have a 13 year old grandson that I am raising who is disabled; who has a special ed bus which almost got hit the other morning by cars, they don't start going slow down MacArthur. Who is going to pay for the turning lane? My taxes already went up since I have been there, and I don't want them to go up again. The pollution from trucks, the smell of diesel, the noise, it is just too much.

GIBBS Who provided you with the information that Price Truck Line was going to be the occupants?

MURDOCK I got the information from the City of Wichita Planning Department.

MCNEELY The application did state: Randy Pauly, Price Trucking. These people are within the notification area, and they received the public notice. Exactly what was put on the application was put on the notification.

BILL WELCH, 609 W MACARTHUR RD, Wichita KS 67217 Ms. Murdock and I plan to get married in the near future, and we will be residing on MacArthur. Price Truck Line owns a location in town, and they do a lot of trailer-to-trailer loading, off hours at night, they do a lot of diesel idling in the wintertime. Their trucks are not in the best condition and blow out a lot of smoke at times. We feel this will decrease our property values. We wonder about the 20-foot access to the roadway. Currently they have taken two spots on our side of the road. We don't want to be closer to the sound and the noise. If you vote to approve this, we would like to see that the tax increases come about that they be passed to the commercial people only. We would like to see some kind of a screening wall/noise barrier and a sight barrier wall between residential and commercial. We would like Price Trucking to operate under restricted hours so we don't have a lot of noise. Limit the number of trucks a day.

CHRISTA DEAN, 545 W. MACARTHUR, Wichita, KS 67217 I am concerned for the children and the families that live in that area. There is a concern about the children that play out in the street and then they will have to worry about the large trucks in the area and it is concerning as a mom. There are a lot of wrecks on the street. The property values are a concern. Having a small business or even a large business does decrease your property value. My experience in seeing even small businesses is that sometimes they are not kept up, and then looking at my window or on my porch that is what I have to view as a homeowner. I would like to vote for this not to be rezoned.

GIBBS The gas plant operation already exists on the north side of the street and it creates a lot of truck traffic now.

DEAN Most of the driveways going into that location are on Seneca. It is further to the west of us so having that immediate traffic across the street from our front yards is something totally different.

GAROFALO The apartment complexes are south of you?

DEAN Those are to the west of us.

KIM EDGINGTON The property is owned by Price Trucking. They will not be operating their operation out of the facility. This is just less than 1 acre, and there would not be nearly sufficient size to operate that kind of facility, so it is not proposed to be used as a trucking facility. Mr. Randy Pauly is the person who will be operating his business out of this. He owns a trenching and ditching company, and as I said, he is the only full time employee with two part time employees. As you can see on the land use map, this stretch right here is about the only residential that you will see for several miles of MacArthur. I can appreciate the neighbors concerns, but there is going to be more of a tendency for heavy industry to continue than for any kind of residential to come in there and develop. This will be a good neighbor, and it will not be a big traffic generator.

BARFIELD Has this been in front of the DAB?

EDGINGTON This will go to the DAB on October 6th.

DUNLAP At the time of purchase, was there any question from the City about zoning? Any promises from the City?

EDGINGTON The property owner purchased the property knowing that this is single-family property, and that in order to utilize it for any other purpose that it would have to be rezoned.

GAROFALO Do you have any idea if Mr. Pauly has a lot of equipment?

EDGINGTON There are outdoor storage guidelines and he will have to comply with the Zoning Code for any outdoor storage. He does have some pieces of equipment that he plans to store inside the storage.

GAROFALO You anticipate that there will be something stored outside?

EDGINGTON He will have to comply with any screening requirements of the Zoning Code.

MARNELL The concern seems to be that this is going to become a truck terminal for Price Trucking. Would your applicant be willing to put a Protective Overlay on this that simply says that it will not be a truck terminal?

EDGINGTON I think that for practical matters this site is not even close to being large enough to support that kind of facility so I don't know that a Protective Overlay will help.

MARNELL I take that comment back because I believe to be a truck terminal they will have to have much heavier zoning.

MITCHELL Do you know about the requirement to remove the underground fuel tanks?

EDGINGTON I do not. This is the first time I heard about that this afternoon.

MCNEELY I was not aware of any issues with underground tanks. A neighbor made me aware of what he perceived as an issue with underground tanks. I contacted City Property Management, as well as the Fire Department, and they have told me that the tanks have been removed from the site. There are no longer tanks on the site, and there are no performance bonds associated with the sale of the site.

DUNLAP We do not find where this type of zoning will allow a truck terminal so a change from "SF-5" to "OW" will not allow the use of the property for a truck terminal.

BISHOP I am concerned about the outdoor storage allowed under the office warehouse zoning. Storage of merchandise shall be allowed outside of an enclosed building only in compliance with the following standards: A) No required off-street parking space or loading area shall be utilized for storage. So what does that mean? Does that mean nothing other than a driveway?

MCNEELY I believe that is addressing the parking space requirement, as required by the Code. You can't use your parking requirement for outdoor storage.

BISHOP The area used for outdoor storage shall not exceed 100% of the floor area of all buildings in the zoned lot?

MCNEELY The floor area in this case, being a single story building, would just be the footprint of the building. I imagine it is several thousand square feet.

BISHOP So they could theoretically use several thousand square feet for outdoor storage?

MCNEELY Yes.

BISHOP Items stored outdoors shall not be visible from any adjacent non-elevated street or from ground level view in any adjacent lot, does that mean it has to be screened?

EDGINGTON We have a screening requirement to the north because of the residential property and to the south because of the residential property. The building itself will likely serve as screening for the property to the south. Because any outdoor storage will be behind the building rather than in the front yard of building.

BISHOP I will take it that any screening would preclude any storage for instance of trucks, or semi's or trailers or that sort of thing.

EDGINGTON Correct, anything that is parked on there can only be incidental to the business that is being operated on the property.

BARFIELD What about screening to the west?

EDGINGTON The west is General Commercial zoning so there is no screening requirement to the west.

MILLER I would refer you to page 134 of the Unified Zoning Code (b). This is under screening mechanical equipment and outdoor work storage areas. They don't have any "LI" or "GI" adjacent to them so they will have to screen all outside work areas and all mechanical equipment areas if they are located within 150 feet of a residential zoning district or a public street.

DUNLAP What's going on here is we are explaining to ourselves that there is going to be a considerable amount of screening required. The odds of there ever being a truck terminal ever being able to operate there if there was enough space is very remote because we don't think the Code allows it, and the screening would allow it to be seen so it couldn't be there anyway.

BARFIELD Where does Mr. Pauly operate his business as of right now?

EDGINGTON He lives by Viola, Kansas and he is operating out of his house.

GAROFALO So Mr. Pauly is renting or has a lease?

EDGINGTON Right, Price Trucking actually purchased the ground as an investment and Mr. Pauly will be operating the business with a long-term lease.

BARFIELD Jess, those tanks have been removed?

MCNEELY City Property Management and the City Fire Department have informed us that the tanks were removed. City Property Management informed us that the sale of the property had nothing to do with performance bonds associated with any tanks.

EDGINGTON I feel pretty confident that if there were performance bond on this property I would know about that and that is something in numerous discussions with the applicant that has never come up.

**MOTION:** To approve, removing staff recommendation for the dedication of the 20-foot right-of-way on west MacArthur.

**MARNELL** moved, **MITCHELL** seconded, the motion, and it carried (11-0).

7. **Case No.: ZON2004-45** – Richard and Patricia Stateler (owner/applicant); KE Miller Engineering PA c/o Kirk Miller (agent) request Zone change from "B" Multi-family Residential and "SF-5" Single-family Residential to "LC" Limited Commercial on property described as;

A tract beginning at the Northwest corner of the Southwest Quarter of Section 24, Township 27 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas; thence 660 feet south along the West line of said Quarter Section to the point of beginning; thence 200 feet east; thence 110 feet north; thence 200 feet west to a point on the West line of said Quarter

Section; thence 110 feet south along the West line of said Quarter Section to the point of beginning, except the west 30 feet for street. Generally located North of Douglas and east of West Street.

**BACKGROUND:** The applicant requests a zone change for the subject property from "B" Multi Family and "SF-5" Single Family to "LC" Limited Commercial. The subject property is 0.4 acre unplatted reserve that is located north of Douglas and east of West Street. The subject property is currently developed with a residential structure that is proposed to be razed. The proposed use of the subject property is to expand Hanna Heating & Air Conditioning that is located on abutting property to the east.

The surrounding area is characterized primarily by commercial uses along the West Street corridor. Most of the properties along the West Street corridor are zoned "LC" Limited Commercial and are developed with various commercial uses. A few properties along the West Street corridor are zoned "B" Multi Family and developed with residential uses. These residential properties are slowing being converted through the years to commercial uses, such as is proposed for the subject property.

**CASE HISTORY:** The subject property is unplatted.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC"	North Star Lodge
SOUTH: "B"	Dentist office
EAST: "LC"	Hanna Heating & Air Conditioning
WEST: "LC"	Vehicle repair

**PUBLIC SERVICES:** The subject property has access to West Street, a four lane arterial street with current traffic volumes of approximately 23,000 vehicles per day. The 2030 Transportation Plan projects traffic volumes on West Street to increase to approximately 27,500 vehicles per day and recommends that West Street be widened to five lanes. The 2002-2012 Capital Improvement Program for the City of Wichita contains a project to widen West Street between Maple and Central to five lanes in 2006. All municipal services are available to be extended to the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED subject to platting the property within one year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by commercial uses along the West Street corridor. Most of the properties along the West Street corridor are zoned "LC" Limited Commercial and are developed with various commercial uses. The request is consistent with the zoning, uses, and character of the neighborhood.
2. The suitability of the subject property for the uses to which it has been restricted: The subject property is zoned "B" Multi Family and is developed with a residential structure. Given the subject property's location along a busy arterial street that is developed with primarily with commercial uses, it is unlikely that continued residential use of the subject property is viable in the long term.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Commercial Locational Guidelines of the Comprehensive Plan.
5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MARNELL** seconded the motion, and it carried (11-0).

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8. **Case No.: ZON2004-47** – Box Development, LLC (owner); Baughman Company PA c/o Terry Smythe (agent) request Sedgwick County Zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on property described as;

A tract of land in the East Half of the Northeast Quarter of Section 33, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas described as follows: Beginning at the Northwest corner of Lot 8, Block 1, Hoskinson 2nd Addition, Sedgwick County, Kansas; thence S 00 degrees 08'35" W along the west line of said Lot 8, 206.00 feet to the Southwest corner of said Lot 8; thence S 89 degrees 29'08" W parallel with the north line of said Northeast Quarter, 205.00 feet; thence N 00 degrees 08'35" E parallel with the west line of said Lot 8, 206.00 feet to a point on the south line of street dedication, (Film 824, Page 404); thence N 89 degrees 29'08" E along the south line of said street dedication, 205.00 feet to the point of beginning. Generally located South of 37<sup>th</sup> Street North, 1/4 mile west of Ridge Road.

**BACKGROUND:** The applicant requests a zone change from "SF-20" Single-family Residential to "LC" Limited Commercial on a 0.97-acre platted tract located south of 37<sup>th</sup> Street North one-fourth mile west of Ridge Road. No specific user has been identified for the site.

The tract is located immediately west of the channel of the Big Slough North, adjacent to the floodway and within the 100-year FEMA floodplain. The property farther west is developed with large-lot suburban residences zoned "SF-20". The property to the northwest is being developed as an urban scale single-family development zoned "SF-5". The property to the north and northeast is zoned "LC" and is located within DP-250 Northridge CUP, formerly known as Starwest CUP and DP-253 Kaylor CUP. This property is vacant. The property to the east and south is part of DP-242 Ridge Center CUP. The abutting property is vacant, but an office building and a day care center are already developed on the remainder of the CUP and several retail buildings are under construction.

**CASE HISTORY:** The subject property is unplatted. CU-293 allowed the use of the property for sand extraction. DP-245 Catamaran Cove CUP was approved in 1999 and would have allowed multi-family residential use of the property; however the CUP approval and associated rezoning request was denied for failure to plat.

**ADJACENT ZONING AND LAND USE:**

NORTH: "LC"	Vacant
SOUTH: "SF-20"	Vacant, sand pit lake
EAST: "LC"	Vacant
WEST: "SF-20"	Big Slough North, single-family residential

**PUBLIC SERVICES:** The subject property has access to 37<sup>th</sup> Street North, which is currently unpaved but will be improved in 2006 to four/five lane urban arterial standards. Traffic counts in 2003 were 14,852 on Ridge between 37<sup>th</sup> and K-96. Current counts and 2030 projections are not available for 37<sup>th</sup> Street North.

The adjacent property to the east (DP-242) has complete access control for 330 feet from its boundary to the major opening. The property to the north (DP-250) has a major opening located near (approximately 40 feet) east of the eastern boundary of this tract. This tract should be limited to one entrance located at least 200 feet from the entrance on the north side of 37<sup>th</sup> Street North and as near to conformance with Access Management Policy as possible.

Municipal water and sewer service will be available to the property.

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the subject tract as "high density residential", which conforms to the requested DP-245 Catamaran Cove CUP. The property to the east is shown as "commercial" and to the west is shown as "office".

The Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* indicate that commercial sites should: (1) be located adjacent to arterial streets or major thoroughfares; (2) be coordinated with mass transit routes, high density residential, employment or other intensive uses; (3) have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential uses; (4) be located in compact clusters or nodes versus extended strip development; (5) should not feed traffic directly onto local residential streets and (6) be located in areas of similar development, and where traffic patterns, land uses and utilities can support such development. Several locational guidelines of the *Comprehensive Plan* apply directly to the physical development of the application area, particularly related to location on a principal arterial and being in a compact cluster of commercial use. A protective overlay could be employed to achieve greater similarity with the adjacent commercial development and to limit noise, lighting and other adverse impacts on surrounding residential development.

**RECOMMENDATION:** While the property is shown on the Comprehensive Plan for high density residential, the requested commercial use conforms with the designation for the property to the east, Parcel 8 of DP-242 Ridge Centre CUP. The Big Slough North serves as a buffer to the residential use of property to the west. And, the property to the west of the subject tract is designated as "office" on the Comprehensive Plan as an additional buffer for the residential uses to the west. Placing a protective overlay on the property with conditions commensurate to Parcel 8 of DP-242 Ridge Centre CUP would achieve the objectives for planned commercial development. Based upon these factors and the information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within one year and the following provisions of a Protective Overlay District:

1. The following uses shall be permitted: All permitted uses in the "LC" Limited Commercial District except: residential uses; public uses, except daycare; and pawnshops, secondhand stores, taverns, nightclubs, drinking establishments, sexually oriented businesses and adult entertainment
2. Maximum building coverage shall be limited to 35 percent.
3. Building setback shall be 35 feet along the north and west property line and per UZC for the east and south property line.
4. All utilities shall be installed underground.



5. Signage: Signage shall be as permitted by zoning district in accordance with the provisions of the Wichita Sign Code, with the following exceptions:
  - a. All freestanding signs shall be a maximum of 20 feet in maximum and monument style. No pole signs permitted.
  - b. Flashing signs (except for signs showing the date, time, temperature and other public service messages), rotating or moving signs, signs with moving lights, or signs that create the illusion of movement shall not be permitted.
  - c. No portable or off site signs shall be permitted.
6. Final determination of access control and guarantees for improvements shall be determined at time of platting, subject to maintaining the maximum separation between the major opening approved for the north side of 37<sup>th</sup> Street North in accordance with Access Management Policy.
7. Cross-lot circulation and internal access with the properties to the east and west shall be provided at time of platting.
8. All lights shall be shielded to reflect light downward or direct light away from residential areas.
9. Trash receptacles shall be appropriately screened to reasonably hide them from ground view. Screening shall be constructed of materials and/or landscaping compatible with and complementary to the exterior of the buildings to which the trash receptacle provides service. Loading docks and service areas shall also be screened from 37<sup>th</sup> Street North, Ridge Road, and the residential areas to the west with screening walls and/or landscaping approved by the Planning Director.
10. Prior to issuing any building permit, a plan for vehicular circulation and a pedestrian walk system to link buildings to the arterial sidewalk on 37<sup>th</sup> Street North shall be approved by the Planning Director.
11. A six (6) foot high masonry wall shall be constructed along property lines within a wall easement where nonresidential uses are adjacent to residential zoning except where there is a minimum three hundred (300) feet of platted reserve area.
12. The building exterior shall maintain compatibility with the adjacent parcel (Parcel 8) of DP-242 in terms of exterior materials, color and texture.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The tract is located immediately west of the channel of the Big Slough North, adjacent to the floodway and within the 100-year FEMA floodplain. The property farther west is developed with large-lot suburban residences zoned "SF-20". The property to the northwest is being developed as an urban scale single-family development zoned "SF-5". The property to the north and northeast is zoned "LC" and is located within DP-250 Northridge CUP, formerly known as Starwest CUP and DP-253 Kaylor CUP. This property is vacant. The property to the east and south is part of DP-242 Ridge Center CUP. The abutting property is vacant, but an office building and a day care center are already developed on the CUP and several retail buildings are under construction.
2. The suitability of the subject property for the uses to which it has been restricted: Residential use is impacted by the presence of the Big Slough North; the expected commercial use of the property to the north and east reduces the desirability of the tract for residential use.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The protective overlay should reduce detrimental effects and the presence of the Big Slough serves as a land use buffer to the property to the west.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The "Wichita Land Use Guide, as amended 1/02" of the *1999 Update to the Wichita-Sedgwick County Comprehensive Plan* identifies the subject tract as "high density residential", which conforms to the requested DP-245 Catamaran Cove CUP. The property to the east is shown as "commercial" and to the west is shown as "office". The Commercial location guidelines contained in the 2002 update of the *Wichita-Sedgwick County Comprehensive Plan* indicate that commercial sites should: (1) be located adjacent to arterial streets or major thoroughfares; (2) be coordinated with mass transit routes, high density residential, employment or other intensive uses; (3) have site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential uses; (4) be located in compact clusters or nodes versus extended strip development; (5) should not feed traffic directly onto local residential streets and (6) be located in areas of similar development, and where traffic patterns, land uses and utilities can support such development. Several locational guidelines of the *Comprehensive Plan* apply directly to the physical development of the application area, particularly related to location on a principal arterial and being in a compact cluster of commercial use. A protective overlay could be employed to achieve greater similarity with the adjacent commercial development and to limit noise, lighting and other adverse impacts on surrounding residential development.
5. Impact of the proposed development on community facilities: Drainage will be an issue for the property.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MARNELL** seconded the motion, and it carried (11-0).

9. **Case No. CON2004-28** – RJ Realty LLC c/o Roger Schofield (owner/applicant); Schofield Honda c/o Pat Dorsett (agent) request Conditional Use to permit vehicle sales on property zoned "LC" Limited Commercial

Lot 1, Ripstra Addition to Wichita, Kansas, Sedgwick County, Kansas  
TOGETHER WITH

That part of the platted alley, running north and south, abutting Lot 1, Ripstra Addition (west side) and Lot 1, Scholfield Hatchett 3rd Addition (east side) and that part of the platted alley, running east and west, abutting Lot 1, Scholfield

Hatchett 3rd Addition (east and south sides) and Lot 5, Block 10, Eastridge Addition of Wichita, Sedgwick County, Kansas. Generally located southwest of Kellogg and west of Gouverneur.

**BACKGROUND:** The applicant is requesting a Conditional Use to permit vehicle sales on a 1.18-acre platted tract located south of Kellogg and west of Gouverneur. The applicant owns the Scholfield Honda dealership on the abutting property to the east and proposes to expand the dealership onto the subject property, which formerly was developed with a bowling alley. The subject property is zoned "LC" Limited Commercial, and vehicle sales requires approval of a Conditional Use when conducted outdoors on property zoned "LC" Limited Commercial.

The applicant submitted the attached site plan illustrating the proposed use of the subject property as a vehicle sales lot. As proposed, the vehicle sales lot does not conform with two requirements of the Unified Zoning Code (UZY) for vehicle sales in the "LC" district (see attached list). First, Section III-D.6.x.(5) of the UZY does not permit outdoor speakers and sound amplification systems; however, the applicant currently uses an outdoor sound amplification system in operating the vehicle dealership. Second, Section III-D.6.x.(8) does not permit the use of elevated platforms for the display of vehicles; however, the applicant proposes to use an elevated vehicle display platform. Both UZY requirements are Supplementary Use Regulations that can be waived by the City Council upon receiving a favorable recommendation from the MAPC. Planning staff recommends waiving both requirements.

The surrounding area is characterized primarily by regional commercial uses along the Kellogg corridor. Most of the properties along Kellogg in this vicinity are zoned "LC" Limited Commercial and are developed with vehicle sales lots. Residential zoning and uses are located to the north across Kellogg in the City of Eastborough and to the south of the subject property.

**CASE HISTORY:** The subject property is platted as the Ripstra Addition, which was recorded on June 14, 1956. The subject property also contains an alley that was vacated (VAC2003-00055) on April 6, 2004.

**ADJACENT ZONING AND LAND USE:**

NORTH:	Eastborough	Single-family
SOUTH:	"TF-3"	Single-family
EAST:	"LC"	Vehicle sales
WEST:	"LC"	Restaurant

**PUBLIC SERVICES:** The subject property has access to Kellogg Drive, a two-lane access road. Municipal water and sewer is available to serve the subject property. Public services are sufficient to support the proposed use.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Locational Guidelines.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The subject property shall comply with the requirements of Section III-D.6.x. of the Unified Zoning Code, except that outdoor speakers and sound amplification systems and the use of elevated platforms to display vehicles shall be permitted.
2. The subject property shall be developed in general conformance with the approved site plan.
3. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding area is characterized primarily by regional commercial uses along the Kellogg corridor. Most of the properties along Kellogg in this vicinity are zoned "LC" Limited Commercial and are developed with vehicle sales lots. The proposed vehicle sales lot is consistent with the zoning, uses, and character of the area.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The proposed vehicle sales lot may be permitted by a Conditional Use. The MAPC has an informal policy of supporting expansion of existing businesses onto abutting property rather than requiring relocation.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The screening, lighting, and compatibility standards of the Unified Zoning Code, the landscaped street yard, parking lot screening, and buffer requirements of the Landscape Ordinance should limit noise, lighting, and other activity from adversely impacting surrounding residential areas.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the subject property as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features, which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The request conforms with the Land Use Guide and Locational Guidelines.

5. Impact of the proposed development on community facilities: No detrimental impacts on community facilities are anticipated.

**MOTION:** To approve, subject to staff comments and citing the findings in their report.

**JOHNSON** moved, **MARNELL** seconded the motion, and it carried (11-0).

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- ❖ **PLANNING COMMISSION ITEMS**  
10. Progress report on Urban Fringe Area Development Standards, presentation John Schlegel.

JOHN SCHLEGEL Planning Director presented the Sedgwick County Urban Fringe Development Standards with an 8-18-04 draft date on it. I just passed out another map. What I would like to do is take you through the draft report, and let you know about the progress we have made with discussion between Sedgwick County staff, City of Wichita staff and the Wichita Area Builders Association on a number of issues relating to development on Urban Fringes. We took a look at standards for a number of things: Water Supply and Service, Community Sewer Systems (CSS), Subdivision Street and Drainage Improvements, Arterial Paving, and Annexation. One thing connected to another.

DUNLAP The Rural Water Districts would not be an alternative for a subdivision?

SCHLEGEL Not within the Urban Growth Areas of any of the cities. Now in more outlying areas outside of those growth areas, of course, either in domestic wells or if there is a rural water district available.

DUNLAP But you didn't say or a rural water district.

GAROFALO I have a question on the recommended Policy #2, talking about the Wichita Urban Service Area, are the 2010 and 2030 Urban Service areas used?

SCHLEGEL Initially we distinguished between the two, but as we moved through this, we just agreed that there was a need to distinguish between the two. So that would apply to wherever it's defined as the City's Future Urban Service Area. As a matter of fact, probably for the next Comprehensive Plan Update we won't even distinguish between the 2010 and the 2030 Service Area.

GAROFALO Would that recommended Policy #2, apply to anything that would be within the Equus beds? The GMD2?

SCHLEGEL Yes, if any of the GMD2 area goes within the Urban Service Area that would apply. That helps to protect those Equus beds because what you are doing is that you may have a community well system for a number of years but ultimately that subdivision will be connected to a municipal system.

GAROFALO What if there was something going in outside of the service area?

SCHLEGEL You could still provide for a community well system but you would have to have some means by which that system could be maintained, owned and operated or have individual wells on individual lots or rural water district.

MCKAY They have to get a permit from the State to provide these services? There are a lot of loopholes to get there.

SCHLEGEL The key, outside of the growth area for Wichita, is being able to demonstrate that there is an adequate safe supply of water for that subdivision. In some parts of the county that may be difficult and in other parts it won't be.

WARNER Did I misunderstand you mentioned this could be a deterrent to annexation?

SCHLEGEL No, it would not be a deterrent to annexation. The idea would be to put in systems that ultimately, when annexation could occur, that the systems then could be connected to the municipal system. What you are doing then is just making a link-up. What is already installed in the subdivision would not have to be replaced with a new system and you would just make the connection at the main.

BISHOP I know in the discussion of the Alternative Sewer System cases where we had City staff discuss their concerns about eventual hook up and so forth the issue has come up that within the urban design water provision comes into a home through the front yard and access from the street and sewer removal goes through the backyard and generally through an easement that goes down between homes to the back. Has that come up in this discussion at all?

SCHLEGEL It would have to be done according to the City specifications for installation of a water system or sewer system within that subdivision, so if that is what the standard for the City is then that is how it would have to be done for that subdivision.

What this is doing is allowing community sewer systems and community wells to be used until such time that the municipal systems can be extended out to the subdivision.

BISHOP We have considered one zone change or one to the southeast where the alternative sewer containment area is going to be in the front yard.

SCHLEGEL Was that for a community sewer system?

BISHOP Yes, but the containment that would then be pumped on was going to be in the front yard.

SCHLEGEL There are a lot of different systems, and they all employ different technology so some may do what you are describing.

BISHOP Well that was the one where the City Water and Sewer Department expressed considerable concerns about it and we attempted to get into it that whatever was planned would have to be agreed to by the City Water and Sewer and they took that out.

SCHLEGEL We did not get into a discussion about each and every different type of community sewer system and how they would be designed for subdivision. What was agreed upon was that as long as the system that was being installed in the subdivision met the City standards for installation of a sewer system that ultimately could be connected to the municipal system then the City would be glad to see that happen.

BISHOP It sounds like it would provide for the City to have a say in what it would eventually be responsible for maintaining.

SCHLEGEL That is the idea.

WARNER How big of a subdivision would create 200 trips a day?

SCHLEGEL I think they use 10 trips per day, per house. So it is not very many, only 20 houses.

MCKAY Let's say that we do the street situation and we do the benefit district and the whole idea is for the County to recoup their money and the City annexes it what happens then?

SCHLEGEL The City will eventually wind up developing that arterial to a four lane standard but in the meantime the County will still have to be paying off whatever bonds were issued to pay for the paving so they are still going to have to cover that cost. I would imagine that they are still going to want to collect their recapture fee and put it towards repayment of those bonds.

MITCHELL They are doing the same thing now on assessment projects. Special assessment projects that are built in the county that are annexed all or in part still pay those assessments that were required at the time of platting.

MCKAY What I am saying is that if they are not in the City and they are not a subdivision so they are in the assessment district, the county puts a street in when the subdivision comes about there is no assessment at that point in time only when that subdivision that is in the benefit district is subdivided it is annexed by the City at the same time.

MITCHELL When they come to get their application for development permit they will not be approved until they have made arrangements to pay the County. People sitting right here will be a part of that process. The County Commission will not approve it until they get their money back.

SCHLEGEL What we are doing now is taking this briefing paper to the two governing bodies, after that we would put this draft in a final form and have both bodies endorse it as a statement of policy, and then that would become the platform we would use to go back and make any changes in the Subdivision Regulations, the Zoning Code, etc.

DOWNING John, has this been briefed or made aware of to the 19 small cities and their responsibilities?

SCHLEGEL Not yet. It would be my intent to follow-up after presenting this to the two governing bodies to get this to the stage where I knew it was good.

DOWNING Some of the small cities are out here in the Equus Bed area and they would have some requirements that they might not be aware of that they will have.

SCHLEGEL Again, this would be policy adopted by the BOCC and the WCC. It is not an imposition of any requirements on any of the small cities except it might be applicable in those portions of their growth areas that are unincorporated. We are not trying to go back in and have all the small cities change their Subdivision Regulations, what we are looking at is changing the Unified Subdivision Code in order to implement these policies. You are right that there could be implications for the small cities in doing that. It is my intention to go out and talk to them about that.

MCKAY This will do nothing but help the small cities.

GAROFALO Like where it says Wichita is willing to own and operate the community wells and distribution systems would a small city be required to do the same thing?

SCHLEGEL That would be the idea. If it is going to be something that is ultimately going to connect to their municipal system I think they ought to be entertaining owning and operating those systems in the interim. They could negotiate that with the City of Wichita or a private entity.

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The Metropolitan Area Planning Department informally adjourned at 4:25 p.m.

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

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John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)